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(II OF 1899)

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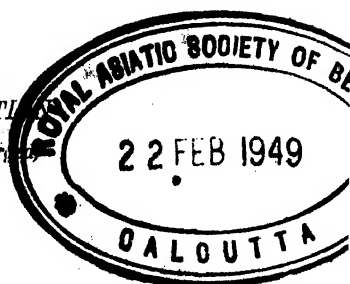
BY

M. N. BASU, M.A., B.L.,

*Advocate, High Court, Calcutta, Stamp Reporter to the
High Court of Calcutta, Author of the Court
Fees and Suits Valuation Acts, &c., &c.*

FOURTH EDITION

(Revised & Enlarged)



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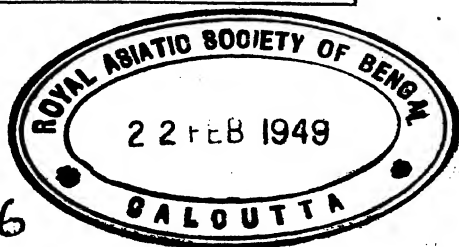
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PREFACE.

I take this opportunity of thanking the Bench and the Bar for the kind appreciation shown to the previous edition of this book.

I have made a thorough revision of this work in the light of the latest repeals and amendments introduced by the provincial legislatures modifying the provisions of the Indian Stamp Act. The periods of duration of the Assam and the Central Provinces Stamp (Amendment) Acts having expired they are no longer in force and their places have not been filled up by passing fresh amending Acts. As regards Burma and the United Provinces, new Stamp (Amendment) Acts have been lately passed by their local legislatures. The stamp duty chargeable on instruments in Bombay has been altered by the Bombay Finance Act of 1932. To avoid confusion and to facilitate quick reference I have incorporated with the main Act amended rates of stamp duty of the different provinces.

Attempts have been made to explain the principles which underlie the chargeability of instruments to stamp duty and English decisions have sometimes been referred to for the purpose. The latest judicial decisions and interpretations elucidating many difficult points of stamp law have been carefully noted and the case laws on the subject brought up to date. The topics under each section and article have been re-arranged which will help to clear up the difficulties in the subject matter.

I shall feel highly rewarded if the present edition proves as useful as its predecessors.

HIGH COURT, CALCUTTA. }
January, 1933.

M. N. BASU.

PREFACE TO THE SECOND EDITION.

The rapid sale of the first edition necessitated another edition earlier than I anticipated. I thank the profession for the appreciation shown to this book.

In this edition I have revised the book with special care and all the reported decisions up to the end of January, 1926 have been incorporated and the rules have been brought up to date. I have added the older Regulations not included in the first edition.

I shall think my labours amply rewarded if the profession find this book useful.

High Court, Calcutta.
15th February, 1926.

}

M. N. BASU.

PREFACE TO THE FIRST EDITION.

In this volume I have tried to explain the various sections and the articles in the light of the reported decisions of the different courts in India. How far I have succeeded it will be for the legal profession and the public to judge.

The reported cases have been sub-divided and arranged under appropriate heads.

The decisions under Act II of 1899 have all been embodied and the principles enunciated in the decisions under the earlier Acts are also included. The amount of stamp duty payable under the old Acts is to be determined with reference to the old law in force at the date of execution of the instrument; hence I have printed in *extenso* the Acts of 1869 and 1879 as reference to their sections may be necessary. The references to the sections of the older Acts are given under each section. A comparative table has been added to show at a glance the new and the older sections.

The duties chargeable under the Amendment Acts of various provinces are shown under the appropriate articles.

The rules have been corrected up to November, 1924.

I will consider my labours amply rewarded if the legal profession and the public consider this edition to be of any use to them.

My thanks are due to Mr. I. N. DE, M.A., B.L., Vakil, for materially assisting me in seeing the edition through the press.

High Court, Calcutta.
5th December, 1924.

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M. N. BASU.

TABLE OF CONTENTS.

	PAGE.
Introduction	vii
Statement of Repeals and Amendments	xv
Comparative Tables	xvii
Abbreviations	xxi
Table of Cases	xxii
Indian Stamp Act—(Contents)	xlii
Indian Stamp Act—(Commentaries)	1
Act XIII of 1924	369
Act XI of 1926	370
Government of India Rules—Finance Department—	
Rules for use of Stamps	371
Rates of Exchange	380
Reduction and Remission of duty	381
Old Stamp Acts—	
Act I of 1879	407
Act XVIII of 1869	446
Act X of 1862	470
Act XXXVI of 1860	491
Bengal Regulations :—	
Regulation X of 1829	507
Regulation XVI of 1824	519
Regulation I of 1814	533
Regulation XXVI of 1814	536
Regulation VII of 1800	536
Regulation VI of 1797	537
Bombay Regulations—	
Regulation XIV of 1815	538
Regulation XVIII of 1827	539
Regulation VIII of 1830	545
Regulation XIV of 1831	545
Madras Regulations—	
Regulation VIII of 1808	546
Regulation XIII of 1816	548

	PAGE.
Rules—	
For Sale of Stamps—Bengal	550
For Sale of Stamps—Bihar & Orissa	555
For Sale of Stamps—Bombay	561
For Sale of Stamps—Burma	570
For Sale of Stamps—C. P.	574
For Sale of Stamps—Madras	582
For Sale of Stamps—Punjab	585
For Sale of Stamps—U. P.	594
Subject Index	599

INTRODUCTION.

The idea of raising revenue to a state from the transactions of its citizens originated in Holland. The first stamp law was passed in Holland in 1624. That system was adopted in England during the reign of Charles II, but under the reign of William and Mary it assumed a definite shape and thereafter various statutes were passed requiring stamps on various instruments among the English people.

The first stamp law in India was Regulation VI of 1797 which was limited in extent to Bengal, Bihar, Orissa and Benares. Various stamp laws were subsequently introduced in the sister provinces of Bombay and Madras.

The first stamp Act applicable to the whole of India was Act XXXVI of 1860 which came into force from the first day of October, 1860. This Act was repealed by Act X of 1862 which came into force from the first day of June, 1862. Act X of 1862 was twice amended and was finally repealed by Act XVIII of 1869 which came into force from the first day of January, 1870. Act XVIII of 1869 was again repealed by Act I of 1879 which came into force from the first day of April, 1879. Subsequent amendments were made of Act I of 1879 by Acts IX of 1881, I of 1888, V of 1888, XVIII of 1888, VI of 1889, XX of 1890, XII of 1891, VI of 1894 and XIII of 1897. Act I of 1879 was finally repealed by Act II of 1899 which came into force from the first day of July, 1899. This Act II of 1899, as amended by subsequent amendments is the present stamp law of India.

An essential requisite for the levy of stamp duty by the State is the existence of an instrument evidencing a transaction by the subjects. As Lord Esher, M. R., observes in *Commissioners of Inland Revenue v. Angus*, (1889) 23 Q.B.D. 579 (589, 593), "the thing which is made liable to the duty is an *instrument*. The taxation is confined to the instrument whereby the property is transferred.....The Crown cannot have the stamp duty unless the parties to the sale choose to effectuate the transaction by an instrument which of itself conveys the property." An agreement is a good illustration of the above statement. "A mere proposal or offer until accepted amounts to nothing. If accepted in writing, the offer and acceptance together amount to an agreement; but, if accepted by parol, such acceptance does not convert the offer into an agreement nor into a memorandum of an agreement." [*The Secretary to the Commissioners of salt, etc., v. The South Indian Bank Ltd*, 38 Mad. 349 (353)].

The present Act is divided into 8 chapters. Chapter I deals with the extent and commencement of the Act and definitions. The definitions specify the elements which would constitute the instruments included in the schedule to the Act. But some of the instruments specified in the schedule have not been defined in the Act and for their definition one must look to general law. It should be noted that unless an instrument is included in the schedule, it is not taxable, and need not bear any stamp at all. In order to make the instrument dutiable, all the elements necessary according to the definition must be present, otherwise the instrument is outside the definition and will be dutiable only if it comes under some other article of the Act.

Failure to stamp a document which must needs be stamped by reason of the provisions of the Stamp Act does not affect the validity of any contract therein contained, but renders the document inadmissible in evidence (53 Cal. 515 at page 519-520). This view is also borne out by the observations of the Judicial Committee in 10 M. L. A. 438 (452) where their Lordships said : "The Sudder Ameen should have allowed the defendant to get his documents stamped, and, if necessary, should have adjourned the hearing for that purpose. The Court, however, excluded them from evidence, as unstamped, and as documents which were inadmissible unless stamped. The proper course, then, to be adopted is to reverse the decisions of the Sudder Court and of the Sudder Ameen, and to remand the cause to the lower Court not for the purpose of hearing the cause on fresh materials other than the stamped documents, but to enable the defendant to get the instruments stamped". In considering the subject of contract, the penal clauses are not to be considered, as these are subsidiary to the contract by the parties. A stipulation in a contract to refer a dispute to arbitration will be a subsidiary clause. The nature of the instrument is to be considered from its contents and not from the title of the instrument.

Part A of chapter II deals with the liability of instruments to duty. Section 3 lays down that the instruments mentioned in the schedule are liable to duty except those executed by or on behalf of or in favour of Government; and also that a bill of exchange or a promissory note made or executed out of British India, is to be stamped on the date when it is accepted or paid or endorsed or negotiated in British India. Section 4 lays down that if several instruments are employed for completing a single transaction of sale, mortgage or settlement, then the principal instrument shall be chargeable with the prescribed duty and the parties will determine which will be the principal instrument and each of the other instruments will be

chargeable with a duty of one rupee. According to section 5 if one instrument contains several distinct matters, then the instrument is to bear the aggregate amount of the duties chargeable on each distinct matter. If several persons interested in a property execute an instrument to convey their common interest, then one document is necessary; but if they have separate contracts to make with separate persons then the instrument is to bear the aggregate duty. Similarly if several properties are sold to one person then one instrument is necessary but if these be conveyed to several persons then several instruments would be necessary. The underlying principle is, whether the several contracts contain distinct matters. Under section 6 when an instrument is so framed as to fall within several articles in the schedule then it is to bear the highest of the duties prescribed. If an instrument is materially altered then it is a new instrument which must be stamped afresh. According to section 7 a policy of sea-insurance is to be expressed in a sea-policy and shall not be for a time exceeding 12 months. Section 8 lays down that when any local authority has been authorized under the Local Authorities Loan Act, 1879, to issue bonds, debentures and other securities, then such local authority is to pay a duty of one per centum on the total amount of the bonds, debentures and other securities issued by it. Under section 9 the Governor General in Council may, by rule or order published in the gazette of India, reduce, remit or compound the duties prescribed.

Part B of chapter II deals with the mode of stamping an instrument. The duty charged on an instrument, shall be indicated on the instrument by stamp which will be either adhesive or impressed. Section 10 provides how duties are to be paid and section 11 specifies the instruments which should be stamped with adhesive stamps. Section 11 is not exhaustive and the Governor General in Council is authorized by section 75 to prescribe rules for the use of stamps on instruments. Postage stamps may be used as adhesive stamps under rule 16. Section 12 says that the adhesive stamps prescribed under the Act are to be cancelled by the executant of the instrument by writing his name or initials on or across the stamps so that the stamps cannot be used again. The time of cancellation is the time of execution except in the case of an instrument executed out of British India. The effect of non-cancellation of the stamp will be that under section 15 the instrument is to be deemed unstamped and therefore inadmissible in evidence and the omission will be punishable under section 63 with fine which may extend to one hundred rupees. Any objection as to non-cancellation is to be raised before the instrument has been admitted in evidence as provided by section 36 and no

objection will be entertained thereafter and the appeal Court will be powerless to reject the instrument. By section 13 the Act provides that an instrument should be so written upon an impressed stamp paper that the stamp may appear on the face of the instrument and by section 14 it is enacted that one instrument shall be written on one stamp paper only. The rules provide that if the instrument cannot be completely written on one stamp paper then plain papers may be added. If one stamp paper of the requisite value is not procurable then the duty may be denoted by several stamp papers making up the aggregate amount but a portion of the instrument should be on each stamp paper. Any instrument written in contravention of the aforesaid methods is to be deemed unstamped.

Part C of chapter II deals with the time of stamping an instrument. Every instrument executed in British India shall be stamped at the time of execution of it. But instruments other than bills of exchange and promissory notes drawn out of British India shall be stamped within 3 months after they have been received in British India. As to bills of exchange and promissory notes drawn out of British India the first holder thereof may affix thereto the proper stamp before he presents the same for acceptance or payment or endorses the same. It has been held in some cases that in case of a promote executed out of British India it must be a valid instrument according to the law of the country.

Part D of chapter II deals with valuation for duty. It is necessary to ascertain the valuation of an instrument in order that the proper *ad valorem* duty may be calculated. Where the amount in an instrument is expressed in foreign currency it will be calculated in the currency of British India according to the rate of exchange notified by the Governor General in Council in the Gazette of India under section 20. As regards the valuation of stocks and marketable securities for the purposes of *ad valorem* duty, their value would be the average price or value thereof on the date of the instrument. Interest payable on an instrument is not to be taken into account in calculating the duty payable on the instrument. An instrument connected with mortgage of marketable security or a discharge or release of such an instrument is to be stamped as an agreement. It often happens that a property is sold subject to a mortgage or charge upon it ; in calculating the duty payable on the consideration for the same the value of the mortgage or charge is to be added to the consideration money. The principle is that the duty is to be calculated upon the free and unencumbered corpus of the subject matter of the sale. But if a mortgaged property be sold to the mortgagee, the duty already paid on the mortgage may be deducted from the

duty payable on the deed of sale. Section 25 prescribes the method of valuation of an annuity, and section 26 provides for cases where the subject matter is indeterminate and includes the valuation of mining leases. As it is extremely necessary for calculation of duties that valuation should be set out in the deed, section 27 requires that facts affecting the chargeability of any instrument with duty shall be set forth in the instrument. The effect of an omission to state such facts is an offence under section 64 of this Act which penalises the executant with a fine extending to five thousand rupees. In the schedule, various articles prescribe duties for the instruments set forth therein. Such valuation cannot be increased at the instance of a Collector of a District (44 All. 339 F. B). In case of sale of any property in parts, section 28 directs that the duty is chargeable on the consideration set out in the instrument conveying each separate part.

Part E in chapter II. specifies the person who is to pay the duty but that is also subject to the contract between the parties. Section 44 provides for a suit by a person who has been erroneously ordered to pay any duty or penalty, to recover the same from the person liable to pay. Section 30 requires that a person who receives an amount more than Rs. 20/- in cash shall on demand by the person who pays the same give a duly stamped receipt. Failure to grant such a receipt is an offence under section 65 which imposes a fine extending to one hundred rupees. Under section 35 a receipt if not duly stamped can be admitted in evidence on payment of penalty of rupee one.

Chapter III relates to adjudication about stamps. If a person is in doubt as to the amount of duty chargeable upon an instrument, he is to send the same to the Collector, who on payment of a fee (not exceeding Rs. 5 and not less than eight annas) shall determine the duty payable on such instrument. If he finds that the instrument is chargeable with duty then on payment of the duty he is to endorse the same on the instrument, and if he finds that it is not so chargeable he shall certify to that effect.

Chapter IV deals with instruments not duly stamped. If such an instrument is brought before a person having by law (courts) or consent of parties (such as arbitrators, commissioners, etc.) authority to receive evidence, and every person in charge of a public office, then such person if he finds that the instrument is insufficiently stamped, is to impound the same, but in the case of a receipt the impounding officer instead of impounding the same may require a duly stamped receipt to be filed before him and if he admits the document on payment of

a penalty he shall also send an authenticated copy of the instrument stating the amount of duty and penalty levied and in every other case, the instrument in original should be sent. The Collector in such cases may refund any portion of the penalty in excess of rupees five. The Collector may also certify that the instrument is not chargeable with duty or may levy duty and penalty on an instrument not being an instrument chargeable with a duty of one anna or half an anna or a bill of exchange or promissory note. If any person of his own motion produces an unduly stamped instrument, not being an instrument chargeable with a duty of one anna or half an anna or a bill of exchange or a promissory note, within one year from the date of its execution and proves that the instrument was not duly stamped by accident and offer to pay the duty then the Collector is to certify that the proper duty has been paid. But the payment of penalty shall not bar the prosecution in respect of any offence which a person may have committed against the stamp law. All duties, penalties or other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of movable property of the person from whom they are due (s. 48).

It should be borne in mind that an insufficiently stamped instrument is inadmissible in evidence and would be admissible only on payment of penalty. The penalty cannot be levied in the case of instrument bearing an one anna stamp (except in the case of a receipt) and a bill of exchange or a promissory note. An insufficiently stamped instrument may be admitted for a collateral purpose or in a criminal case or if it be executed by or on behalf of Government or if it bears a certificate by the Collector. If such an insufficiently stamped document be admitted in evidence then such admission cannot be questioned in the appeal court. But the appeal court may order proceedings to be taken under section 61 of this Act. But in the case of a negotiable instrument if the instrument cannot be admitted in evidence on account of the insufficiency of stamp then the plaintiff may sue on the original consideration for recovery of the money. If a bill of exchange or a promissory note etc., is presented for payment without a stamp, the payer can stamp the instrument and cancel the stamp and then pay (s. 47).

Chapter V deals with allowance for stamps which cannot be used being spoiled through mistake, misuse or inadvertance. Section 49 specifies the grounds for allowance. The enquiry must be done by the Collector himself. section 50 provides for the time limit for such applications. Section 51 provides for refunds in case of printed forms no longer required by Corporations. Section 52 refers to refunds for misused stamps and

also provides for the time within which the application is to be made and section 53 prescribes how refunds are to be made in such cases. Section 54 provides for refund of stamp for which the party have no immediate use. Section 55 provides for allowance on renewal of debentures.

Chapter VI deals with references and revision. Section 56 specifies that the powers exercisable by Collector under chapters IV and V (ss. 33 to 55) are subject to the control of the Chief Controlling Revenue Authority. The Collector acting under sections 31, 40 or 41 can if he feels doubt may refer a case to the Chief Controlling Revenue Authority. Thus though section 31 is within chapter III, the Chief Controlling Revenue Authority can decide if the case is referred to him by the Collector. The Chief Controlling Revenue Authority may refer a case to the High Court or the Chief Court in cases referred to it by the Collector or otherwise coming to its notice. The cases referred to the High Court or the Chief Court must contain its opinion and the instrument must be in existence. General questions cannot be referred. Moreover, the reference would be subject to the controlling words of section 59 (59 Cal. 1171). The High Court can call for further particulars. Under section 60 a Court can refer a case to the High Court or the Chief Court in case of doubt as to the amount of duty to be paid in respect of any instrument coming within s. 35 of this act. It should state its own opinion thereon. If it is done by a court subordinate to the District Court then the reference must be made through the District Court.

Chapter VII deals with various offences under the stamp Act. Section 62 provides that any person drawing, making, issuing, endorsing, transferring or signing otherwise than as a witness, or presenting or accepting or paying any bill of exchange or promissory note without the same being duly stamped or executing or signing any instrument chargeable with duty or voting or attempting to vote under any proxy not duly stamped shall be punished with fine which may extend to five hundred rupees. When such a case is instituted, the Collector is to make an enquiry, and to give an opportunity to the accused to pay. In such cases dishonest intention is to be proved and it should also be found that the instrument is chargeable with duty. It is an offence under section 63 not to cancel an adhesive stamp. An omission to state facts required to be stated under section 27, is an offence under section 64. A refusal to grant a receipt is an offence under section 65. If a Policy is not made or if made is insufficiently stamped, then it is an offence under section 66. If bills or marine policies are not drawn in sets then it is an offence under section

67. If the bills are post-dated then it is an offence under section 68. If there be a breach in the sale of stamp rules or stamps are sold by an unauthorized person then it is an offence under section 69. Sanction of the Collector must be obtained before criminal proceedings can be instituted against any person. Want of such a sanction vitiates the proceedings. A Magistrate with 3rd class powers cannot try the offences. A criminal Court which would have Jurisdiction to try for offences under the Code of Criminal Procedure can try such offences.

Chapter VIII relates to supplemental provisions and deals with powers of Government to frame rules for the sale and supply of stamps and to make rules generally to carry out the provisions of this Act.

The Schedule specifies the instruments to be stamped and the amount of stamp to be affixed on each.

The Stamp Act being a fiscal Act, the Schedule is to be deemed to be exhaustive and to be strictly construed. Instruments not mentioned in the Schedule are to be deemed to be excluded from the operation of the Stamp Act. The duty payable is to be determined with reference to the Act in force at the time of execution of the document but the penalty leviable is to be determined with reference to the Act in force at the time of admission of the instrument in evidence.

Under the Devolution Act (Act XXXVIII of 1920) the various provinces have altered the rates of stamp to be affixed on an instrument executed within those provinces respectively but in some of the provinces it is enacted that no instrument, counterpart, duplicate or copy chargeable with duty under the Amendment Acts of those provinces shall be received in evidence as properly stamped unless the duty chargeable under the Amendment Acts of those provinces has been paid thereon.

The colour of the impressed stamp varied in different times. At one time bi-coloured stamps were issued. During the Mutiny large number of stamps issued under the Regulations were plundered from the local treasuries and the stamp vendors, and to prevent the unlawful use of these plundered stamps Act XIX of 1858 was passed which required authentication of all stamped papers.

STATEMENT OF REPEALS AND AMENDMENTS.

SECTION 1, Repealed in part, Act 10 of 1914.

SECTION 2, Amended, Act 15 of 1904.

Act 13 of 1916.

Act 18 of 1928.

Act 8 of 1930.

Repealed, in part, Act 5 of 1906.

SECTION 8, Amended, Act 6 of 1910.

SECTION 11, Amended, Act 5 of 1906.

Act 5 of 1927.

SECTION 23-A, added, Act 15 of 1904.

Amended, Act I of 1912

SECTION 26, Amended, Act 15 of 1904.

SECTION 29, Amended, Act 15 of 1904.

Act 5 of 1906.

SECTION 30, Amended, Act 5 of 1906.

SECTION 32, Amended, Act 5 of 1906.

SECTION 35, Amended, Act 5 of 1906.

Act 13 of 1924.

SECTION 39, Repealed, in part, Act 4 of 1914.

SECTION 40, Amended, Act 15 of 1904.

Act 5 of 1906.

Act 13 of 1924.

SECTION 41, Amended, Act 5 of 1906.

Act 13 of 1924.

SECTION 49, Amended, Act 4 of 1914.

Act 5 of 1927.

SECTION 51, Amended, Act 5 of 1906.

Act 4 of 1914.

SECTION 56, Amended, Act 15 of 1904.

SECTION 57, Amended,

(in lower Burma), Act 6 of 1900.

Act 11 of 1923.

Act 13 of 1916.

Act 18 of 1919.

SECTION 62, Amended, Act 5 of 1927.

SECTION 67, Amended, Act 5 of 1927.

*Comparative Table of the Sections and Articles of Act II of
1899 and the earlier Acts.—(Contd.)*

Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860
SECTIONS				
37	...	.....		.....
38	35	21, 22, 23	17 (2)	13 (5)
39	36	.....		.....
40	37	24, 28	15, 22	13
41	38	24 (b), 28	15 (1)	13 (1)
42	39	20, 25	16	13 (5)
43	40	22, 24	.....	.....
44	41	.....	.....	.....
45	42	42	15 (6)	13 (3)
46	43	25	21	13 (8)
47	44	26	24	.....
48	...	.....	.....	.....
49, 50	51	45, 46	50 (1) (2)	32 (1) (2)
.....	...	47	.....	.....
51	...	.....	.....	.....
52	52	.....	.....	.....
53	53	45	50 (3)	.....
54	54	45	.....	.....
55	...	.....	.....	.....
56 (1)	...	40	50 (5), 35	13 (3)
56 (2) (3)	45	.....	.....	.....
57	46	41 (a) (b)	.....	.....
58	47	41 (c)	.....	.....
59	48	41 (d)	.....	.....
60	49	.....	.....	.....
61	50	40	.....	.....
62	61	29, 30	3, 11, 23	3, 9
63	62	31, 33	8, 11	6, 9
64	63	34 (c), 35	51	35, 36
65	64	27 (b)	29	15
.....	...	36	.....	.....
.....	...	37	54	40
.....	...	38	53	.....
66	65	.....	.....	.....
67	66	32	12, 25	10
68	67	.....	13	11
.....	...	.....	37 to 47	20 to 30
69	68	48	48	31
.....	...	.....	49	.....
70	69	43	52	37
71	70	44	53	38, 39
72	71	.....	.....	.....
.....	72	.....	.....	33
73	...	.....	.....	.....
74	55	48	36	19
75	56	.....	.....	.....
76	57	48	.....	.....
76A	...	.....	.....	.....
77	59	17	.....	.....

*Comparative Table of the Sections and Articles of Act II of
1899 and the earlier Acts.—(Contd.)*

Act II of 1899	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860
SECTIONS				
78	60	51	37	.....
79	2	2	1	1
Articles in Schedule I.	Articles in Schedule I.	Articles in Schedule I-II.	Articles in Schedule A.	Articles in Schedule A.
1	1	II. 5	.....	.....
2	2	.....	.....	.....
3	38	II. 31	.....	.....
4	3	II. 14	8	2
5	5	II. 3, 11	1, 2, 4 to 7	1, 28
6	29	II. 21	13, 46, 47	36, 41
7	6	II. 35	.....	.....
8	7	I. 21	.....	.....
9	31	.....	.....	.....
10	8	II. 33	.....	.....
11	9	II. 41	.....	.....
12	10	I. 22	.....	.....
13, 49	11	I. 1, 2, II. 1	10, 57	4, 5, 45
14	12	II. 9	11	6
15	13	I. 5	12, 15 to 19	8, 10, 11, 12, 14
16	15	I. 6	14	9
17	.....	.....	.....	.....
18	16	.....	.....	.....
19	17	II. 4	20	.....
20	18	II. 22	21, 6	16
21	19	II. 1	10	.....
22	20	II. 28	22	17
23	21	I. 15	29, 24, 25	7, 19
.....	.....	.....	34	.....
24	22	I. 23	28 to 32	21 to 24
25	23	II. 16	33, 37	33
26	24	I. 8	.....	.....
27	.....	.....	.....	.....
28	26	.....	.....	.....
29	34	.....	.....	.....
30	27	.....	.....	.....
31	35	I. 18, II. 28	38	27
32	30	I. 11, 17	.....	.....
33	36	II. 37	35	25
.....	.....	.....	36	13, 26
34	28	I. 9	.....	.....
35	4, 39	I. 19	3, 39 to 42	29 to 32
36	40	.....	.....	.....
37	41	II. 2	10	4
38	42	II. 29	45	35
39	43	II. 34	.....	.....
40	44	I. 10, 16, II. 20	46 to 50	7, 36, 39 to 41
.....	.....	II. 15	.....	.....

*Comparative Table of the Sections and Articles of Act II of
1899 and the earlier Acts.—(Contd.)*

Act II of 1899.	Act I of 1879	Act XVIII of 1869	Act X of 1862	Act XXXVI of 1860
SECTIONS				
41	.....	.....	.....	.....
42, 50, 51	45	II. 23 to 25	53, 58, 59	46
43	46	.....	.....	.....
44	47	II. 12	60	.....
45	37	I. 18 II. 39	54	42
46	32, 33	II. 26	27	20
47	49	I. 3	55, 56	43, 44
48	50	II. 13, 18, 19, 32	43, 44	34
52	51	II. 8	.....	.....
53	52	II. 7	61	47
54	53	II. 27	51	37
55	54	II. 30	52, 62	38
.....	.....	.....	63	48
56	55	I. 7	14	9
57	14	I. 12	18	13
58	57	I. 14	64	49
59	.....	.....	.....	.....
60	58	II. 6	65	.....
61	59	I. 20	.....	.....
62	60	I. 4, 13	9, 26	3, 19
63	60A	.....	.....	.....
64	25, 56	II. 36	.....	.....
65	61	II. 10	66	.....

ABBREVIATIONS

A. I. R.	All India Reporter.
All.	...	...	...	Indian Law Reports, Allahabad Series
A. L. J.	...	...	...	Allahabad Law Journal.
A. W. N.	...	...	...	Allahabad Weekly Notes.
Bom.	...	...	...	Indian Law Reports, Bombay Series.
B. H. C. R.	...	...	...	Bombay High Court Reports.
B. L. R.	...	...	...	Bengal Law Reports.
Bom. L. R.	...	...	...	Bombay Law Reports.
Bur. L. R.	...	...	...	Burma Law Reports.
Bur. L. T.	...	...	...	Burma Law Times.
Cal.	...	...	...	Indian Law Reports, Calcutta Series.
C. L. J.	...	...	...	Calcutta Law Journal.
C. L. R.	...	...	...	Calcutta Law Reports.
C. W. N.	...	...	...	Calcutta Weekly Notes.
C. W. N. (Pat.)	...	...	...	Calcutta Weekly Notes, Patna Supplement.
C. P. L. R.	...	...	...	Central Provinces Law Reports.
Cr. L. J.	...	...	...	Criminal Law Journal of India.
Ind. Cas. or I. C.	...	...	...	Indian Cases.
L. W. or M. L. W.	...	...	...	Law Weekly, Madras.
L. L. J.	...	...	...	Lahore Law Journal.
L. B. R.	...	...	...	Lower Burma Rulings.
Lah.	...	...	...	I. L. R. Lahore Series.
Luc. or Lucknow	...	...	...	I. L. R. Lucknow Series.
Mad.	...	...	...	Indian Law Reports, Madras Series.
M. H. C. R.	...	...	...	Madras High Court Reports.
M. I. A.	...	...	...	Moore's Indian Appeals.
M. L. J.	...	...	...	Madras Law Journal.
M. L. T.	...	...	...	Madras Law Times.
M. W. N.	...	...	...	Madras Weekly Notes.
N. L. R.	...	...	...	Nagpur Law Reports.
N. L. J.	...	...	...	Nagpur Law Journal.
O. C.	...	...	...	Oudh Cases.
O. L. J.	...	...	...	Oudh Law Journal.
O. W. N.	...	...	...	Oudh Weekly Notes.
Pat.	...	...	...	I. L. R. Patna Series.
Pat. L. J.	...	...	...	Patna Law Journal.
P. L. T.	...	...	...	Patna Law Times.
P. R.	...	...	...	Punjab Records.
P. L. R.	...	...	...	Punjab Law Reporter.
P. W. R.	...	...	...	Punjab Weekly Reporter.
Ran.	...	...	...	I. L. R. Rangoon Series.
S. L. R.	...	...	...	Sind Law Reporter.
U. P. L. R.	...	...	...	U. P. Law Reporter.
U. B. R.	...	...	...	Upper Burma Rulings.
W. R.	...	...	...	Sutherland's Weekly Reporter.

TABLE OF CASES.

The references are to pages.

A

- | | |
|--|--|
| <p>A, L. M. A. L. Chetty firm <i>v.</i> Maung Aung Ba, 137</p> <p>A. M. Amolia <i>v.</i> Ibrahim Ishak, 315</p> <p>Abbasi Begum <i>v.</i> Tufan Alikhan, 360</p> <p>Abbilakh Singh <i>v.</i> Khub Lal, 241</p> <p>Abdool Hossein <i>v.</i> Goolam Hoosein, 351</p> <p>Abdul Muhammad Khan <i>v.</i> Mahananda Upadhyaya, 173</p> <p>Abdul Aziz Khan <i>v.</i> Appayasami Naicker and others, 5</p> <p>Abdul Rahaman <i>v.</i> Ruhim baksh, 209</p> <p>Abdul Rahim <i>v.</i> The Municipal Commissioners of the City of Bombay, 6</p> <p>Abdul Rabbani <i>v.</i> Shyam Lal Thapa, 171</p> <p>Abdul Rafiq <i>v.</i> Bhajan, 255</p> <p>Abdulla Haji Dawood Bowlá Orphanage, In Re, 71, 92, 276, 360</p> <p>Abdulla Rawantan <i>v.</i> Subbaraya, 47</p> <p>Abhiraj <i>v.</i> Data Din, 61</p> <p>Abid Hussain <i>v.</i> Asghar Hussain, 186</p> <p>Abinash Chandra Bose <i>v.</i> Nageendra Nath Dutt, 167, 180</p> <p>Accountant-General <i>v.</i> Kristo Kamini, 11</p> <p>Achamparambath <i>v.</i> Ganty, 347</p> <p>Act XVIII of 1860, In the matter of, 67, 68, 348</p> <p>Acting Secretary, Board of Revenue <i>v.</i> The Agent, South Indian Railway, 45</p> <p>Adarji Dorabji <i>v.</i> Rajaram, 227</p> <p>Administrator General <i>v.</i> Premlal Mullick, 2, 7</p> <p>Administrator General of Madras <i>v.</i> Tozar Stephen, 353</p> | <p>Agachand <i>v.</i> Balak Rai, 192</p> <p>Agra Bank, In Re., 11</p> <p>Ahmad Raza <i>v.</i> Saiyid Abid Hus-sain, 186, 300</p> <p>Ahmed Raza <i>v.</i> Abid Husian, 7, 34</p> <p>Ajodhya Prasad <i>v.</i> Parashram, 197</p> <p>Alagappa Chetty <i>v.</i> Narayan Chettiar, 181</p> <p>Ali Mahammad <i>v.</i> Jagannath, 118, 120, 167, 256</p> <p>Alimani Sahiba <i>v.</i> Subbrayadu, 174, 175, 179</p> <p>Amar Chand Ray <i>v.</i> Prasanna Dassi, 5</p> <p>Amar Singh <i>v.</i> Asa, 223</p> <p>Amarsi <i>v.</i> Dayal, 37, 42, 281</p> <p>Ambai, In the matter of, 258</p> <p>Ambica Charan Das <i>v.</i> Emperor, 259</p> <p>Ambica Charan <i>v.</i> Kalipada, 370</p> <p>Ambica Charan <i>v.</i> Srinath Dutta, 79</p> <p>Ambica Dutt Vyas <i>v.</i> Nityanund Singh, 248, 249, 253, 255</p> <p>Amina Begum <i>v.</i> H. H. the Nawab of Rampore, 120, 256</p> <p>Amirkhan Pillai <i>v.</i> Naiyah Gowndan, 59</p> <p>Amir Mirza Beg <i>v.</i> Kedar Nath, 106</p> <p>Amirthammal <i>v.</i> Ramalinga, 23, 324, 358</p> <p>Amirtham Pillai <i>v.</i> Nanyah Gownden, 112</p> <p>Ananda Mohan Shaha <i>v.</i> Ananda Chandra Naha, 9</p> <p>Anandji Visram <i>v.</i> Nadiad Spinning and Weaving Company, 111</p> <p>Ananta <i>v.</i> Damodar, 38</p> <p>Anantanarayana Iyer, <i>v.</i> Savitri Ammal, 173, 175</p> <p>Anantram <i>v.</i> Lala Murlidhar, 230, 281</p> |
|--|--|

- Andarji Kalyanji v. Dulabh Jeevan*, 36, 253
Ankur Chandra v. Madhab Chander, 172, 176
Annamalai Chetty v. Velayudu Nadar, 267
Anonymous Case, (10 Cal. 274), 5, 322
Appa v. Kachai Bayyam Kutti, 77
Appovier v. Ramsubba, 38
Apu Budgavda v. Narhari, 45, 315
Arjan Das v. Ram Lakhaya, 248
Arunachellam Chetty v. Olagappa Chetty, 196
Asan Kuthu v. Ramanathan, 288
Ashabai v. Haji Ty. d Haji, 38
Asvath Narayan Astaputre v. Chimabai Gopalroo Sadakar, 77
Atkins v. Reynolds, 258
Atkinson v. Fell, 277
Atmaram v. Emperor, 144
Atmaram v. Lala, 351
Atmaram v. Sardarkuar, 159, 201
Atmaram v. Umerdam, 8, 112, 113, 172
Atmaram Mohanlal & Sons v. Matandas Devidayal & others, 34, 107
Attorney General v. Anglo Argentine Tramways Co. Ltd. 319
Attorney-General v. Cleobury, 54
Ayyavayyar v. Rahimansa, 53
- B**
- Babu Gour Prosad v. Lalla Nand Lal*, 164
Babu Ram v. Lakhan Singh, 183
Bachu Lal v. Kandhai Lal, 160
Bagabai v. Sheo Ram, 270, 281
Bageshri Dayal v. Pancho, 172
Bageshwari Charan Singh v. Jagarnath Kauri, 31
Bahadur Khan v. Abdul Saheb, 172
Baijnath v. Ahmed Musaji Saleji, 15, 34, 88, 155, 162, 270, 280, 328
Baijnath Das v. Saligram, 172
Baiju v. Jawahir, 153, 185, 223, 225
Bai Lakhi v. Amaldas, 19, 70
Bai Matibahu v. Bai Mamoo bai, 275
Baisnab Charan v. Ramdhan, 172
Bala v. Bhikhu, 183
Balaji Mahadev v. Krishna Bin, 169
Balaji Sitaram v. Bhikaji, 363
Balakram v. Govind Nath Tewary, 4
Balakrishna v. Govind Pand, 19
Bala Raghu v. Bhiku Genu, 181
Balaram Budhram v. Ramkrishna, 41, 332
Balbhadar v. The Maharaja of Betiab, 61
Balbin Raghu v. Bhikarbin, 181
Baldeo Das v. Jairam, 165
Baliaram v. Vasudev, 363
Balkaran Rai v. Govind Nath, 4
Balkrishna v. Bapu Yesaji, 4
Ballabh Das v. Puran, 265
Bally sing v. Bhagwan Das, 161, 175
Balmukund v. King-Emperor, 25
Balmukund Lal v. The Collector of Jaunpore, 15
Balshet v. Dhond Ramkrishna, 52
Balvantrao T. Bapuji v. Purshotam, 11, 13
Banarasi Prasad v. Fazal Ahmad, 108, 162, 172
Banda Hoosain v. Yawar Hoosain, 249
Bangarsami v. A. R. A. A. R. S. Somasundaram, 59
Bank of Bengal v. Lucas, 76, 77
Bank of Bengal v. Radhakissen, 263
Bank of England v. Vagliano, 4
Bank of Madras v. Subbarayulu, 104, 109, 163
Banker v. Lowis and Peat, 259
Bansidhar v. Bu Ali Khan, 61, 342
Bansidhar v. Jawala Prasad, 15
Baraboni Coal Concern Ltd. v. Paricharak and others, 137
Baraham Dev v. Ramkrishna, 108, 162
Barisal Rindan Sumity v. Sital Chandra Mukhopadhyaya, 21, 128
Batson v. Trance, 347

- Baxter, *In Re*, 306
 Bengal Indigo Co. *v.* Raghubar Das, 47
 Bhagat Ram *v.* Ratan Chand, 168
 Bhagwandas Sahai *v.* Bhagwandin, 52
 Bhagwat Prasad *v.* Sher Khan, 36
 Bhairab Chandra *v.* Alek Jan, 10
 126, 286
 Bhajan *v.* Mushtak Ahmad, 298
 Bharata Pisharodi *v.* Vasudevan, 62, 65, 170
 Bhauram Madan Gopal *v.* Ramnaranayan Gopal, 176
 Bhavan Badhar, *In Re*, 316
 Bhavanibai, *In Re*, 309
 Bhawanji Harbhum *v.* Devji Puja, 33, 35, 117
 Bhawanji Narasi *v.* Assan Pitambardas, 204
 Bheri Darayya *v.* Maddipatu Ramayya, 51
 Bhimangowda *v.* Ecranah, 36
 Bhimsenrao *v.* Venugopala, 158, 168
 Bhobani Mahato *v.* Shihbath, 315
 Bhopal *v.* Chatto Singh, 45
 Bhopal *v.* Jagram, 51
 Bhowanji Harbhum *v.* Devji Punja, 107, 204
 Bhudev *v.* Ashutosh, 333
 Bhugwandas *v.* Netherlands Insurance Co., 100
 Bhupatram *v.* Hari Prio Coach, 15
 Bhutia Dhondoo *v.* Ambo, 363
 Bibee Meherun-nessa *v.* Abdul Gunee, 45
 Bibi Kazmi *v.* Lachhman Lal Sao, 13, 14, 21
 Bidhuranjan *v.* Mangan Sardar, 20
 Bijoy *v.* Howrah Amta Railway Co., 46, 176, 267
 Billings *v.* The Uncovenanted Service Bank, 164, 262
 Binja Ram *v.* Raj Mohun Dey, 249, 250, 253
 Bishambar *v.* Nand Kishore, 5, 251, 253, 255
 Bishunath *v.* Ishri Dayal, 159, 167, 173, 174, 252
 Bissessar Singh *v.* Bhagwan, 114
 Biswanath *v.* Govind Chandra and Others, 14, 158, 168, 179, 181, 227, 325
 Board of Revenue, Madras *v.* Mopanna, 323
 Body Naikan and Best and Co., *In Re*, 89
 Bombay Co., *Ld. v.* The National Jute Mills, 15, 88, 94, 162, 178, 179, 186, 269, 270, 281, 328
 Bowen *v.* Ashley, 90
 Bowji *v.* Parsu, 307
 Boyd *v.* Krieg, 45, 46, 176, 267
 Bradley *v.* Agra Bank, 11
 Briggs *v.* Peel, 91
 Brojendra Coomar *v.* Brohomoyee Chowdhurani, 7, 250
 Brojendra Nath Bakshi *v.* Emperor, 10, 234
 Brojo Govind *v.* Goluk Chunder, 250, 253
 Brojomohan Singh, Kumar *v.* Lachmi Narain Agarwala, 3
 Brooks *v.* Etkins, 65
 Brown *v.* Inland Revenue, 48
 Budavaram *v.* Noota Ibbundrum, 59
 Bukshee Kunnee Lal *v.* Maharani Thakoornath, 15, 80, 352
 Bunko Behary Ghosh, *In Re*, 45
 Burn & Co., *In Re*, 67, 69, 348
 Byjnath Dutt Jha. *v.* Musst. Putshee Dobain, 9, 83, 84, 113
- C**
- C. Ross Alston *v.* Pitambar, 347
 Carlill *v.* Carbolic Smoke Ball Co., 262
 Carter *v.* Agra Bank, 59
 Chami *v.* Ana Pattar, 164
 Champabati *v.* Bibi Jiban, 183, 185
 Chandanmull Benganey *v.* National Bank of India, Ltd., 318
 Chandra Kanta Mookherjee *v.* Kartic Chandra Chaile, 7, 16, 63, 139, 342
 Chandra Prasad *v.* Varjalal, 60
 Chandrashankar *v.* Bai Magan, 294
 Chandra Singh *v.* The Amritsar Banking Corporation, 170, 174, 175
 Chanmappa *v.* Ayyarma, 14

Channamma v. Ayyanna, 63, 65, 170
Chanter v. Dickinson, 76
Cheedella v. Amureddi, 358
Chenbasappa v. Lakshman Ram Chandra, 169, 170, 172, 174, 176
Chet. Po. In re the application of, 35
Chetumal Bulchand v. Noorbhoy Jafferji, 65
Chhak Mal v. King-Emperor, 231, 234, 235
Chidambaram v. Ayyarswami Thevar, 60
Chimappa Pillai v. M. R. C. Muthuram Chettiar, 174
Chinnaji v. Ramu, 22, 90, 265
Chinnaiya v. Muttuswamiy, 334
Chinnaya v. Ramaya, 181, 185, 226
Chokhalingam v. Annamalai Chetty, 62, 167, 173
Choonce v. Chundee, 47
Choonce Mundar v. Chundee Lal, 45, 47
Chotey Lal v. Girraj Kishore, 174, 193
Choturam v. Ganesh, 39
Chowksi Himut Lal v. Chowksi Ashmut Lal, 249
Christacharan v. Karibasayya, 9, 112
Christie v. Commissioners of Land Revenue, 76
Chunder Kishore v. Gour Churn, 51
Chunilal v. Manishankar, 248
Chuni Lal Tulsiram v. Mulabai, 178, 179
Coats Ltd. v. Inland Revenue Commissioners, 307
Collector of Ahmedabad v. Rambhau, 37, 144, 153, 195, 291
Collector of Nimar v. Lakshminchandra of Khandwa, 7, 263, 264, 270
Collector of Rangoon v. Abdur Rahaman Sarkar, 170, 187
Collector of Rangoon v. Maung Auong Ba, 20, 22, 263, 264, 287
Collector of Tanjore v. Ramasamier, 44, 137, 138

Collector of Vijagapatam v. Krishna, 2, 118, 332
Commissioners of Inland Revenue v. Angus & Co., In. Re., 10
Commissioners for special purposes v. Pemsel, 278
Cooke and Kelvey. in re, 151, 193, 217, 220, 222
Cory v. Davis, 65
Cox & Co., v. Pestonji & Co., 78, 115
Crown v. Ramjilal, 237, 241
Currie M. P. v. M. R. Chetty, 202

D

Dadoba v. Krishna, 84
Damodar Das v. Major Doran, 77
Damodar Gangadhar v. Vamanray Lakshman, 51, 86, 310, 324
Damodar Jagannath v. Atmaram Babaji, 161, 176
Daryaji v. Mahatap Khan, 19
Dasi Chamar v. Ram Autar Singh, 182
Dasmoney Dasse v. Janmejoy Mullick, 52
Datto Dudheswar v. Vithu, 52
Daula v. Goda, 21
David Sutherland Clark v. Mrs. Rose Grimshaw, 23
Davlat Ram v. Bulaki Das, 14, 15
Dawson's Bank v. C. R. V. V. Chetty, 172
Dayal v. Bhimma, 21
Davaram v. Chandmull, 107, 204
Debi Prasad v. Ram Ghulum Saha, 262
Debi Prasad v. Rupu, 68
Delhi and London Bank v. Orchard, 105
Deputy Collector of Rohri v. Denmal, 45, 314
Deputy Commissioner of Pertabgarh v. Ram Harakh, 226
Deputy Legal Remembrancer v. Ahmed Ali, 7
Devachand v. Hirachand Kamaraj 3, 152, 178, 180, 181, 183, 185, 202, 227
Devaji v. Ramkrishnaiah, 105, 110, 233
Deva Ratna v. Fakir Adam, 63

Devi Ditta Mal, In Re., 155, 169
 Dhaneswar Saba v. Ramrup Gir, 173
 Dhanji v. Vohra Bhaiji, 286
 Dharamdas v. Ganga, 11
 Dharamsala Lala v. Lachman, 250
 Dhaurajmal Kishindas v. Sanwansing Sobhasing and another, 249, 254
 Dhondbhat Narharbhat v. Atmaram Moreswar, 63, 65, 170
 Dhondiram v. Sadasuka, 121
 Dhodu Jagannath v. Narayan Ramchandra, 164, 166
 Dinanath v. Raja Sati Prasad, 6
 Diwan Lachman Das v. Dholan Dass, 185
 Dobson and Barlow v. The Bengal Spinning and Weaving Co., 143
 Dorahji v. Muncherje, 11
 Doraiswamy v. Doraiswamy Iyengar, 31, 131, 165, 166
 Dowlatram Hirjee v. Vitho Radhoji, 88, 103, 106, 109, 114, 115, 244
 Duke of Bedford, In re, 288
 Dulabh Vanmali v. Rehman Jamal, 20, 36, 250, 253
 Dula Mia v. Abdur Rahaman, 115, 163, 174
 Dulma Kunwar v. Mahadeo Prasad, 250, 252
 Dwarkanath v. Sailaja Kantha, 356

E

Earnshaw Wall, In re, 28
 Eastern Financial Association v. Pestonji Cursetji Shroff, 16
 Eknath Sakharam Gounde v. Jagannath Sakharam Gounde, 39, 43, 91, 351, 352
 Emmerson v. Heelis, 290
 Emperor v. Bal Mukund, 146
 " v. Balu Kuppayan, 154
 " v. Bansidhar, 248
 " v. Brij Lal Saran, 229, 230
 " v. Dhokey Lal, 230
 " v. Dungar Singh, 231, 348
 " v. Ishwar Dayal, 231

Emperor v. Kallu Mal, 59, 234
 " v. Panna Lal, 229, 231
 " v. Pattoo Lal, 230
 " v. Rajlingam, 229, 232
 " v. Ram Saran, 165, 232
 " v. Rameshwar Das, 10, 131, 140, 235, 289
 " v. Sherif Dadumiyaji, 45
 " v. Thakur Mahipal Singh, 236
 " v. Sukhdeo, 236
 " v. Tulshi Ram, 68, 69, 230, 233
 Empress v. Ashutosh, 346
 " v. Bahadur Singh, 232
 " v. Balmakund, 236
 " v. Bhairon, 232
 " v. Deo Sahai, 241
 " v. Deokinandan Lal, 229, 230, 241
 " v. Dwarkanath Chowdhury, 192, 199, 230, 231, 307
 " v. Gangadhar Bhunjo, 241
 " v. Gopal Das, 231
 " v. Jallu, 240
 " v. Janki, 192, 198, 199, 230, 231, 232, 241
 " v. Jethmull, 237
 " v. Khetter Mohan, 228, 229, 236
 " v. Maya Lal, 52
 " v. Murad Ali, 229
 " v. Nek, 240
 " v. Niaz Ali, 209
 " v. Ramen Jiya, 11, 13, 48
 " v. Soddanund Mahanty, 5, 192, 199, 231
 " v. Umi, 305
 " v. Venkatayudu, 139

Enat Mondal v. Baloram Dey, 180, 216
 Enatullah Biswas v. Gajaruddi Biswas, 127, 251, 252, 265
 Enayetoolah v. Sheikh Meajan, 180
 Exparte Hill, 46, 86, 94, 95

F

F. M. Troward, In the Goods of, 257

Fanindra Nath Ray v. Bholu Dasi, 309
Fatechand v. Ganga Singh, 254
Fatechand Harchand v. Kisan, 161, 164, 166, 249
Fengl v. Fengal, 159
Ferrier (Mrs) v. Ram Kulpa Ghose, 60, 265
Fielder v. Ray, 271
Financial Commissioner. In Re., 233
Finlay Muir & Co. v. Radha Kissen 79, 269, 271
Firm Attar Singh v. Mool Chind, 184
Firm of Bhagat Ram Ganpat Ram through Kala Ram, etc., v. Chajju Ram, 170, 175
Firm Kishori Lal v. Firm Ram Lal, 107
Firm of Persram v. Firm Parasram Hassanand, 151
Firm of Ram Ditta Mal v. Kesar Das, 254
Firm of Saheb v. Seth Nathoomal, 280
Firm Tejpal Jamna Das v. Ernest V. David, 275
First Grade Advocate of the late Judicial Commissioner's Court, etc., In Re., 306
Fisher v. Calvert, 13
Foley v. Hill, 11
Follett v. Moore, 61
Forest Conservator v. The Secy. of State for India, 221
Forest Contractors v. Secretary of State for India, 26
Forsdike v. Stone, 259
Frank Portlock, In Re., 134
Francis Herbert v. Nawab Saiyad Muhammad Akbar, 158, 160
Frazer v. Bunn, 266
Freeman v. Commissioners of Inland Revenue, 91

G

Gajraj Sing, In Re., 7, 10, 22, 87, 95, 137, 138, 270, 286
Galstaun v. Hutchison, 164, 248, 249, 250, 252
Galstaun v. Woomes Chandra, 263

Ganesh Das v. Lachminarayan, 15
Gangadhyal v. Srimati Chakina, 352
Gangadhar Rao Venkatesh v. Shidramappa, 36, 253
Ganga Prasad v. Ram Doyal, 251
Gangaram v. Amirchand, 161, 174
Gangaram v. Chandra Singh, 111
Gangaram v. Lachiram, 35
Gangaram Kushaba v. Narayan Balaji, 269, 281
Gangaram Narayan Das Teli, In Re., 314, 316
Ganpat v. Prem Singh, 57
Ganpat Kriparam v. Supdu Kriparam, 40
Garuda v. Janakayya, 200
Girdhar v. Haribha, 363
Girdhar Narain v. Umar Aju, 127, 256
Girdharidas v. Jagannath, 152, 197, 217, 226
Gishborne & Co. v. Subal Bowrie, 7, 18, 20, 22, 87, 263
Gnanendra v. Surendra, 20
Gobardhan v. Raghubir Singh, 49, 53
Gobinda v. Goluck, 253
Gobind Chandra v. Dwarka Nath, 52
Gobind Babaji v. Naiku Joti, 241
 " *Das v. Sarju Das*, 255, 262
 " *Gopal v. Balwantrao Hari*, 62, 251
 " *Kumar Sur v. Ram Chandra*, 170, 172
Gogan Chandra Ghose v. Dhuronidhar Mondul, 8, 112
Gokul Mandar v. Padmanund Singh, 2
Golam Guffoor v. Ekram Hossain Chowdhuri, 167, 202
Golam Hossein Ariff v. The Emperor, 229, 233
Golap Chand v. Thakurani Mohokoom Kooaree, 172
Golden v. Taylor, 317
Gomez, L. v. Lyong, 127, 342
Goodrich v. Venkama, 45
Gopal Pandey v. Pursotam, 365
 " *Sitaram v. Desai*, 28, 297
 " *Tukaram v. Sorabji*, 263

Gopala Padayachi *v.* Raja Gopala Naidu, 166, 173, 178, 181
 Gopalrao, *In Re.*, 340
 Gopal sahu *v.* Nand Kumar Singh, 47, 77
 Gopinath *v.* Baleram, 221
 Gopireddi *v.* Mahanadi Reddi, 281
 Gour Chandra Das *v.* Prasanna Kumar, 8, 112, 163
 Gourpershad *v.* Lalla Nandlal, 164, 183, 185
 Government of Bombay *v.* Ganga, 305
 Govindan *v.* Moidin, 88, 90, 94
 „ *v.* Otathayik, 45
 Govind Pandurang, *In re.*, 39, 42
 Govind Singh *v.* Bijoy Bahadur Singh, 127, 173, 265
 Govindasami *v.* Kuppusami, 112
 Gowardhandas *v.* Keshav Ram, 281
 Grant, *In Re.*, 306
 Great Northern Railway Company *v.* Commissioner of Inland Revenue, 351
 Grey *v.* Smith, 66
 Gujraj Singh, *In Re.*, 49
 Gulab Singh *v.* Mohar Singh, 42, 281
 Gulzar Mondal *v.* Sariman Mandalini and others, 262
 Gunga Pershad *v.* Ganga Singh, 79
 Gunga Prasad *v.* Ram Dayal, 251
 Gunoo Singh *v.* Natafat Hossian, 51, 52
 Guranditta *v.* Firm Gurdasmal Ramchand and others, 162, 178, 186, 357
 Gurdapa Bin Irappa *v.* Narovithal, 185
 Gurdas Mal *v.* Ishar Das and another, 176
 Gurditta Mal *v.* Dhanna Singh, 20, 64, 342
 Gurpada Bin *v.* Naro Vithal, 158, 226, 227
 Gurudas Mal *v.* Crown, 294
 Gurudas Mal Ram Chand *v.* Guranditta Mal, 178

H

H. Pestonji & Co. *v.* Cox & Co., 111, 114, 115
 H. V. Low & Co. *v.* Sudhannakumar Chakravarty, 61
 Hakim Rai *v.* Ganga Ram, 171
 Hanmappa, *In re.*, 82, 84, 115, 258
 Haran Chandra Bhoore *v.* Russick Chandra Neogy, 166, 196
 Hardeo Das *v.* Parbati, 186
 Harendra Lal *v.* Tarini Churn, 137
 Harendra Lal *v.* Uma Chran, 112
 Hargobind Rai *v.* Keshwa Prosad Sing, 47
 Hargopal *v.* Abdul, 249
 Har Narain *v.* Bihari Lal, 181
 Haribai *v.* Krishnarao, 193, 309
 Hari Chand *v.* Govind Laxman Gokhale, 9
 Harmasji, *In Re.*, 272
 Harichand *v.* Jivna Subhana, 252, 253, 299
 Hari Mahateji *v.* Balambhat Raghunath, 7
 Hari Mohan *v.* Sourendra, 172
 Harinath Bandopadhyaya *v.* Pramotho Nath Roy Chowdhury, 46
 Hari Sing *v.* Fazal, 20, 266
 „ Sing *v.* Sahib Sing, 102
 Hassanbhoy *v.* The British Indian Steam Navigation Co., 17
 Hegarty *v.* Milne, 262
 Hemanta Kumari *v.* Midnapore Zemindary Co., 45, 46
 Hemchandra Mahto *v.* Prem Mahto, 333
 Heptulla Sheikh Adam & Co. *v.* Esafalli, 30, 264
 Herbert Francis *v.* Nawab Saiyed Muhammed Akbar, 76, 118
 Hill *v.* Nihal Chand, 104, 109
 Himmat Provident Society, Ltd., *In Re* 337
 Hinganghat Mill Co., Ltd., *v.* Rekchand Bhikamchand, 322
 Hira Lal *v.* Data Din, 172
 Hiralal Nawalarn, *In Re*, 32, 351
 Hiralal Ramnarayan *v.* Shankar Hirachand, 165

Hiralal Sircar *v.* Queen Empress,
18, 19, 256
Hitvardhak Cotton Mills Co., Ltd
v. Sorabji Dinshaw, 20, 22, 23,
366
Hormusji Irani, In Re, 266
Hub Ali *v.* Wazir-un-nissa, 52
Hudspeth *v.* Yarnold, 262
Humayun *v.* Wajib Ali, 117, 185
Hurdwary Mull *v.* Ahmad Musaji
Saleji, 88, 94, 155, 160, 270, 328
Hurro Chunder *v.* Shoorodhani
Debya, 6
Hutuman Sahib *v.* Husain Sahib,
61
Huxley *v.* O' Connor, 67

I

Ichharm *v.* Govindram, 4
Imperial Bank of India, Calcutta,
Re, 12, 78
Indarchand Aswal *v.* Kallee Dass
Mitter, 253
International Banking Corpora-
tion *v.* H. Pestonji, 111, 115
International Banking Corpora-
tion *v.* Lakhmi Das Premji,
77, 115
Isac Mahomed *v.* Bai Fatma, 113
Ishan Chunder *v.* Sujan Bibi, 46,
50, 136
Ishardas *v.* Masud Khan, 167, 200
Ismail Hoospain *v.* Purbhubhai,
172
Issur Chandra *v.* Jiban Kumari,
11
Issur Singh *v.* Bergmann, 58

J

J. C. Morris *v.* The Simla Bank,
162
J. W. Smith *v.* Gopal Sheikh, 7
Jackson *v.* Stopherd, 277
Jacob & Co. *v.* Vicumsey, 171
Jacob Rodrigues *v.* Peter Fer-
nandu, 87, 167
Jadowji *v.* Jetha, 353
Jadowji Gopal *v.* Shamji, 15, 337
Jadunath Chowdhury *v.* Kalidas
Chunder, 162
Jadunath Ghose *v.* Schoene, 363
Jagannath Rahatgir *v.* Deokinon-
dan, 153, 158, 177

Jagannath, Shamall etc. *v.* Rani-
bux, 42
Jagan Prasad *v.* Indar Mal, 172,
175
Jagdish *v.* Firangi, 181, 185,
Jai Dev Singh *v.* Emperor, 5
Jairam *v.* Balkrishna, 131
Jajodia Cotton Mills, In Re., 114
Jalan Chand *v.* Assaram, 13, 14,
16, 19, 21, 95, 158
Jannadas Harinarayan, In Re.,
67, 68
Jamsedji *v.* Soonabai, 278
Jotindra Mohan Tagore *v.* Bijoy
Chand, 41, 332
Javamal *v.* Muktabai, 4
Java Nathoo, In Re, 7
Jawahir Singh *v.* Lachman Das,
171, 172, 251
Jayman *v.* Easin, 356
Jekison Bapuji *v.* Bhowsar B.
Jetha, 36, 253
Jethaparkha *v.* Ram Chandra, 61
Jettibai *v.* Ramchandra 34, 69,
117
Jhanda *v.* Harnam, 182
Jhaver *v.* Banuniya, 68, 69
Jivan Kua *v.* Gobind Das, 39,
42, 351
Joggeswar Dutt *v.* Bhuban Mo-
han Mitra, 28
Jogi Ram *v.* Mohammad Rafi,
57, 340
Joharnal *v.* Tejram, 181
John Doyle *v.* Mundaree Mundle,
7, 22

Jones *v.* Simpson, 13
Joti Pershad *v.* Brij Raj Saran, 65,
164, 170
Joyman Bewa *v.* Easin Sarkar,
8, 160, 164, 180, 181, 310,
356, 357,
Junior Secretary of the Board of
Revenue U. P. *v.* Lalta Baksh
Singh, 357
Justices of the Peace *v.* The Ori-
ental Gas Co., 40
Jwala prasad *v.* Ram Narain,
131, 290

K

K. M. K. R. Kunarappa Chetty,
In Re., 250, 256, 265

Kechubhai v. Krishnabhai, 40
 Kala Khan *alia* Kalu v. Nathu Khan, 57
 Kali Charan Shaha v. Mani Mohan Saha 78, 160, 178, 184, 270
 Kali Churn Das v. Noho Kristo Pal, 33, 34, 117, 159
 Kalidas Lalbhai v. Tribhuwandas, 42
 Kalimane Sahiba v. Subharayudu, 179
 Kalu v. Basantamal, 253
 Kallu v. Halki, 158, 165, 166, 182, 188, 196
 Kamakshi Ammal v. Subbaraya Chetty, 163, 186, 187
 Kanhaiyalal v. Domingo and another, 60
 Kanhaya Lal v. Stowell, 166, 252
 Kanhayialal v. Emperor, 231, 232, 348
 Kanhayialal v. Mahammad Husain Khan, 52
 Kapason v. Shamu, 196
 Karachi Municipality, In Re., 68, 346
 Karuthapa Rowthan v. Baba Moidin, 62
 Kasaram v. Mallah Chengama, 64
 Kashinath v. Villen, 22, 23
 Kastur v. Fakiria, 299
 Kastur Bhavani v. Appa, 199
 Katchi Rowther v. Naina Mahomed, 61, 263
 Kesava Chetty v. The Secy. of State for India in Council, 6
 Keshab panda v. Bhobani Panda, 263
 Keshari Chand v. Asharam Mahato, 14
 Keval v. Jetha, 220
 Khetra Mohan Saha v. Jamini Kanta Dewan, 14, 19, 21, 60, 168
 Khoob Lal v. Jungle Singh, 180, 266
 Khosal Rac v. Jankee Das, 51
 Khub Chand, In the matter of, 192, 193, 219, 222
 Khub Chand v. Kalian Das, 52
 Kiam-ud-din v. Rajjo, 172

Killing Valley Tea Company, Ltd. v. Secretary of State for India, 5
 King-Emperor v. Balu Kuppayan, 189, 192
 Kirkood v. Carroll, 87
 Kishomal Kirpomal v. Vishindas Sukhramdas, 58
 Ko Shway Aung v. Strange Street & Co., 275, 321
 Kodali Mathaya v. Tangoppala Ramaya, 174, 176
 Kola Sai v. Balai Hazam, 107
 Konakalla v. Nallari, 184
 Kondali Tea Co., In Re. 30, 298
 Kondpai Sheshayya v. Grandhi Venkata, 185, 226
 Koonjo Mohan Das v. Krishna Chandra Shah, 250
 Kopasan v. Shamu, 165, 196
 Kriparam v. Baru Mal, 106
 Krishnaji v. Rajmal, 161, 171, 172, 176
 Krishnaji v. Sukhdeo, 181
 Krishnaji Narayan v. Balkrishna, 352
 Krishnaji Shadashiv v. Dulaba, 299
 Krishna Panda v. Balaram Panda, 42
 Krishna Row v. Muttu Krishna, 347
 Krishnasami v. Rajagopala, 41
 Kshetra Mohan Pal v. Hazari Talukdar, 40
 Kuar Laxman v. Keshao, 127
 Kulwanta v. Mahabir Prosad, 356
 Kumar Bahadur v. Suraj Bux, 174
 Kumar Brojomohan Singh v. Lachmi Narayan Agarwala, 3, 137, 138, 139, 168
 Kunhi Koya Haji v. Panikka Vittil, 24, 78, 120
 Kyd v. Mahomed, 15, 85, 89, 268, 269, 270, 272, 328

L

L. Gomes v. L. Young, 127, 342
 Labh Singh and others v. Mehr Singh and others, 77
 Lachminarayan v. Rameshwar, 3, 138, 160, 168

Ladha Singh *v.* Munshiram, 113
 Laing *v.* Smith, 262
 Lakshmandas *v.* Rambhau, 19,
 20, 23, 183
 Lakshammal *v.* Narsinha Raghu-
 va, 8, 118, 163
 Lakshanan Das *v.* Anna, 6
 Lakshminarayan *v.* Ramjogi Garu,
 181, 255
 Lakshmi Narayan *v.* Suppara
 Gounden, 181
 Lala *v.* Bhaga, 21
 Lala *v.* Suppara Gounden, 163
 Lala Harihar *v.* Bisheshar, 357
 Lala Jethaji *v.* Bhaga Gopal, 60
 Lala Jyoti Prakash *v.* Lala Mukti
 Prakash, 274
 Lalit Mohan Ghosh *v.* Gopali
 Chuck Coal Co. 84
 Lall Jha *v.* Negroo, 47
 Lalla Mal *v.* Kesho Das, 15
 Lallu Singh *v.* Ram Nandan, 51
 Land Acquisition Acts, *In Re.*, 259
 Land Mortgage Bank *v.* Abdul
 Kasim, 52
 Latch *v.* Wedlake, 35
 Lee *v.* Griffin, 271
 Lehna Singh *v.* Ahmad Din, 59
 Lemon *v.* Austin, 303
 Limmer Asphatte Company *v.*
 Commissioner of Inland Re-
 venue, 28, 87, 135
 Linotype and Machinery Co., *In*
Re., 263
 Local Govt. *v.* 347
 Lokumal *v.* The Sind Bank, 176
 London & Westminster Bank *v.*
 Commissioners of Inland Reve-
 nue, 347
 Lucas *v.* Jones, 67
 Luchmeeput Doogar *v.* Mirza
 Khairat Ali, 90
 Luxman and Ganpat, *In Re.*, 5,
 133, 134
 Luxmibai *v.* Ganesa, 127, 256,
 265

M

M. A. Raeburn and Co., *In re*, 13
 M. G. Pendse *v.* R. S. Malse, 8
 M. R. Currie *v.* S. V. Muthu
 Raman Chetty, 180, 181
 Madam Pillai *v.* Attunarayana

Pillai, 112
 Madras, Railway & Co. *v.* Rush
 22, 269
 Magandas Khem Chand *v.* Ram
 Chand, 22
 Mahadeb Aon *v.* Chairman of the
 Howrah Municipality, 6.
 Mahadeo Koeri *v.* Sheoraj Ram
 Teli, 106, 183, 250, 252, 265,
 266
 Mahalakshmi *v.* The Firm of
 Nageshwar Pursotam, 35
 Mahammad Jafar *v.* Ram Charan,
 176
 Mahant Raj Balamgir, *In re*, 271
 Mahapal *v.* Mahesh, 252
 Maharaja of Durbhanga, *In Re.*,
 28, 32, 43, 70, 77
 Maharaja Luchmissur Singh *v.*
 Must. Dakho, 47
 Maharajah Rajundur *v.* Sheopur-
 sun, 163
 Mahendra *v.* Kailash, 315
 Mahesh *v.* Kamini Kumari, 114
 Mahinder Singh *v.* Firm Nagina
 Mal Bhana Ram, 21
 Mahomed Ewaz *v.* Haji Nanch
 Mean, 357
 Mahomed Raffe *v.* Secy. of State,
 359
 Mahomed Rowthan *v.* Mahomed
 Husin Rowthan, 24, 78, 120,
 158
 Mahomed Sadiq *v.* Amar Nath,
 20, 23
 Makhbul Ahmad *v.* Musst. If-
 tikhan-unnessa, 341
 Malaram *v.* Musst. Prem Kuar,
 181
 Mallappa *v.* Matum Nagu, 161
 Manchi Mines, *In Re*, 3
 Manek Lal Mani Lal, *In re*, 316
 Mangal Sain *v.* Govind Das, 177,
 185
 Mangal Sen *v.* Shankar Sahai,
 111
 Manickchund *v.* Jomoona Das,
 62, 174
 Maniram Seth *v.* Seth Rup Chand,
 248
 Martis *v.* Cuthbert, 188
 Ma Nyan *v.* Maung Saw Mya,
 182

- Manjunath Mangeshaya v. Mangesh Sheshagiriapa, 301, 316
 Mansukhram, In Re., 71, 360
 Mantappa Nadgowda v. Baswantrao Nadgowda, 136, 164, 168
 Manugchit Sai & others v. Maung Thein & others, 41
 Maria Jacob Rodrigues v. Peter Fernando, 271
 Mariambai v. Hassan Ahmed, 25
 Marine Insurance Certificate, In Re., 55, 337
 Marine Insurance Policies, in re, 221
 Marine Investment Company v. Havaside, 166
 Mark Ridded Currie v. S. V. Mutu Raman, 180, 181
 Marshall v. Powell, 262
 Martis v. Cuthbert, 188
 Marwari v. Thakurani Mohokoom Kooare, 172
 Ma Saw v. Maung Ba, 35
 Mashook Amcen v. Marew Reddy, 50, 51
 Ma Pwa May v. S. R. M. M. A. Chettiar, 182, 187, 188, 189
 Ma Shwe Kyaw v. Ma Bok Gale, 183
 Ma Shwe Pu v. Maung Po Dan, 161
 Ma Thim Ta v. K. K. R. M. Veera Kalai, 155, 261, 271
 Mata Din Kasodhan v. Kazim Husain, 28
 Matheson v. Ross, 166
 Mathurabhai v. Dalpat, 62, 127
 Mathuradas v. Babulal, 35
 Mathu Sastrigal v. Visvanath, 62
 Maung Bakywan v. Ma Kye Kye, 108, 159, 162, 177, 181, 342
 Maung H. Tat v. Maung San Dan, 283
 Maung Kyi v. Ma Ma Gale, 172
 Maung Myo v. Ma Yyin, 113, 179
 Maung Po Din v. Maung Po Nyein, 35
 Maung Po H. Too v. Ma Ma Gyi, 165, 180, 183
 Maung Po Ye v. Chein Hug, 61
 Maung Shwe Myat v. Maung Po Shim, 172
 Maung So v. Maung Pyi, 165.
 Mawchi Mines Ltd. In Re., 4
 Mayen v. Alston, 172
 McAdam, In the goods of, 79, 118, 340
 McDowell & Co v. Raghava Chetty, 136, 355, 365
 Measures Brothers Ltd. v. Commissioners of Inland Revenue, 28
 Meenakshisundara Mudaliar v. Rathnasami, 94
 Meer Kaisur Khan v. Ibrahim Khan, 132, 291
 Megha, In Re., (Megha v. Aga Singh), 308, 324
 Meghji Hansraj v. Ramji Jaito, 78
 Melanoth v. Teasdale, 65
 Mela Ram v. Brij Lal, 63, 106
 Menglas Tea Estate, In Re., 30, 76, 297, 367
 Menumal Vishindas V. Emperor, 240
 Mi Ke v. Nga Kan Gyi, 162
 Mi Mi v. Sohan Singh, 178, 182, 185
 Midnapore Zemindary Co., Ltd. v. Troilokey Nath Haldar, 45
 Miss Taylor v. Charles Bleach, 6
 Mohammad Ewas v. Brij Lal, 181
 Mohan Lal Kunialal v. Kesarimu Chordiya, 109, 162
 Mohesh Chandra Ray v. Gossai Ganpat, 275
 Mohan Lal v. Sri Ganga Cotton Mill Co., 166, 180, 317
 Monmohinee v. Bishenmoyee, 185
 Monohur Lal v. Sheodyal Singh, 180
 Moran v. Chairman of the Motihari Municipality, 105
 Moran v. Mithu Bibee, 77, 78, 326
 Mortimer v. The Commissioners of Inland Revenue, 130
 Mothoora Mohan v. Peary Mohun, 174
 Motichand v. Emperor, 230
 Motilal v. Jogmohan Das, 7, 33, 117, 159
 Moti Lal v. Monmohan, 172

- Moti Lal and Bhagilal v. Munshook Kurrmechand, 267
 Muhammad Abdus Samad v. Qurban Husain, 4
 Muhammad Ayub v. Rahim Buksha 165
 Muhammad Hasham v. Emperor, 29, 31, 346, 347
 Muhammad Muzaffer Ali, In the matter of, 10, 139, 296, 308
 Mukund Dharman v. Balkrishn Padmanji, 38, 39, 40, 43
 Mulchand Lala v. Kashiballav Biswas, 127, 256, 265
 Mulji v. Jetha, 138, 168
 Mulji Lala v. Lingu Makaji, 159, 161, 164, 166, 174, 249, 250, 254, 255
 Multa Chetti v. Muttan Chetti 22
 Mu Pwa May v. S. R. M. M. A. Chettias Firm, 163
 Murari Mohan Ray v. Khetter Nath Mullick, 60, 256, 265, 268
 Musa v. Khan, 85, 88, 89
 Musst. Amina Begam v. H. H. the Nawab of Rampore, 78
 Musst. Girja Bai v. Sadashiv, 39
 „ Jai Devi v. Gokalchand, 151, 154, 192, 223
 „ Luabati Debi v. Secy. of State 71
 „ Sunder Kuer v. King-Emperor 232, 247, 315
 Mutasuddi Lal v. Harkesh, 36, 37, 264
 Muthia Chetty v. Kothandaramswamy, 137, 274
 Muthu Chetti v. Muthan Chetti, 22, 61
 Muthu Chettiar v. Meenakshi Sundaram Aiyar, 128
 Muthu. Sastrigal v. Viswanath Pandara Sannabhi 14, 175
 Muttu Karuppa v. Rama Pillai, 161, 176

 N
 N. S. Venkatrama Aiyar v. Chella Pillai, 184
 Nachimuthu v. Andiappa Chandra, 61
 Nagappa Chetty v. V. A. A. R. Firm, 154, 180, 181, 185, 249, 251, 253
 Nago Kanturia v. Balaji Kalari 366
 Najibullah v. Nasir mistri, 51, 52
 Namder Joyram v. Swadeshi Vyapari Mandali Ltd 111
 Nana Bayaji v. Pandurang, 244
 Nana Bin Satu v. Joti Bin Biruji, 46
 Nanak Chand v. Muhammad Afzal 165, 167
 Nandan Misser v. Musst. Chitturbutti, 62, 63
 Nand Lal v. The Joint Hindu Family of Karam Chand etc., 18, 23
 Nand Ram v. Ram Prasad, 252, 253
 Nandaram Moti Ram v. Kacha Bhan 291
 Nandu Bai v. Gau, 15, 31, 297, 299
 Nankhu Singh v. Girija Bux Singh, 173
 Nanbi Bai v. Nathu, 249
 Narain Coomari v. Ram Krishna Das, 48, 76
 Narain Das v. Jessomal, 4, 172
 Narain Das v. Sant Lal, 162
 Narasayya v. Guruvappa, 127
 Narayan v. Karuji, 78
 Narayan Chetti v. Karupattiem, 24, 117, 155, 167, 169
 Narayandas, In Re., 266
 Narayan Ragunath z. Kashinath, 301, 333
 Narayan Ramchandra v. Dhonduraghu, 316
 Narayan Sami v. Lakambalammal 62, 65, 170
 Narendra Nath v. Kamal Basini, 2, 4, 7
 Narsidas Bhagwandas v. Jivlakushal, 91
 Narsingdas Agarwala v. Sheikh Bhartoo, 113
 Nasibun v. Preosunkar, 14, 62
 Nasibun in Re., 11, 18, 19, 22, 48
 Natarajulu v. Subramaniam, 173, 175

Nathoobhai Dullabhai v. Himat-
lal Vastachand, 63, 170
Nathu Gangaram v. Hansraj Mo-
raji, 30, 168, 189, 270
Nathu Ram v. Dugar Mull, 175
Naunhun v. Halka, 324
Nawab of Murshidabad v. Gopi-
nath Mondal, 6
Nazir Khan v. Ram Mohan Lal,
175
Nelson, 288
Nemai Charan v. Emperor, 229,
230, 231
Nemchand v. Lalchand, 351
Nepal Chandra v. Emperor, 239
Netherlands Trading Society, In
Re., 104, 238, 283
Nethuri Menon v. Gopalan Nair,
35, 59
New Egerton Woollen Mills, In
Re., 279
New Spinning and Weaving Co.
v. Kessowji Naik, 11
Nga Pyan Na v. Naung Tha Tan,
182
Nilkantha v. Maruti, 40
Nilkatha v. Keshorao, 137, 269,
355
Nilmoni Kar v. Raja Sati Prosad
and other, 4, 7
Nilratan v. Abdul Gafur, 4, 159,
177
Nirabai, In Re., 5, 133, 134
Nirmal Chunder v. Saratmoni, 36
Nirod Basini v. Sital Prosad, 180
Nripati Chandra Das v. Emperor,
324, 355
Nund Kumar Shah v. Shurno-
moyi, 250, 253
Nundnn Misser v. Musst. Chithur
butty, 342

O

Oakes v. Jackson, 77
Official Assignee of Madras v.
Smith, 11
Oodeychand Boodaji v. Bhaskar
Jagonnath, 111
Orford v. Cole, 177

P

Paban Khan v. Badal Sardar, 20
Panchanon Bose v. Chandi

Charan Misra, 46
Panchanan Roy v. Emperor, 234
Pandurang v. Kishan, 163
Parasca Collieries, Ld., In Re., 89
Parbati Charan v. Amarendra, 9,
112, 172
Parker v. Dubois, 262
Parshotam Narayan v. Taley
Singh, 172, 174, 175
Parthasaradi, In Re. 306
Paul v. Meak, 317
Patil Amtha v. Gorji Keval-
chandji, 268
Patil Vahalabhai v. Sayyad Mus-
samiya, 45
Pearey Lal v. Sukhan Ram, 154,
189, 201
Pearson v. Wilcox, 259
Pennel v. Harrison, 347
Pentayya v. Kesho Ram, 166
People's Bank of India v. Abdul
Karim, 108, 162
Permanund v. Sat Pershad, 56,
340
Perundevitayer v. Nammalvar, 11
Pessumal v. Gagan Mal, 107
Pestonji v. Palanji, 176
Pinner v. Arnold, 5
Piran Ditta v. Mangal Singh, 107,
108, 185, 225
Pitambar Gain v. Uddhb Mondal,
46, 50, 79, 164, 323
Pityee Ahung v. Girghee Koer,
367
Popoori Peddana v. Tammala-
gunta, 201
Potter v. Commissioner of Inland
Revenue, 28
Prahlaad v. Shiblal and others, 254
Pramathanath v. Dwarakanath,
171, 176
Pramathanath v. Sourav Dasi, 4
Prasanna Kumar v. Panauilla, 251,
256, 265
Prasunno Nath v. Tripoora Sun-
duree, 10, 172, 174
Pratapchand S. Purshotamdas, 62,
63, 254, 256, 265
President of the Taluk Board of
Kundapur v. Lakshminara-
yana, 45
Prince Mirza Suriya Qudr v.
Nawaba Qudsia Begam, 41

Prohlad Lakshmanray v. Vithu,
114, 115, 365
Prohlad Prasad v. Bhagwan, 256,
265
Pulugurta Somaraju v. Machiraju
Venkata, 172
Punam Chand Lallubhai Doshi,
In Re, 130, 366
Punamchand Das Chowdhury v.
Taramoni Chowdhurani, 181,
184, 185, 226
Purmandas Jiwandas v. Jamma-
bai, 90
Puthi Reddi v. Velayndasivan,
174
Puthu Reddiar v. Chidambara
Reddiar, 173

Q

Queen v. Ajoodhya Pershad, 241
" *v. Gour Mohan Sen,* 209
" *v. Golam Hussein Saheb,*
228, 232
" *v. Nadi Chand Poddar,*
143, 230, 241, 242
Queen-Empress v. Appavu, 272
Queen-Empress v. Bal Gangadhar
Tilak, 6
Queen-Empress v. Devendra K.
Mitra, 51, 231, 274, 322, 324
Queen-Empress v. Jethlal Jairaj,
241
Queen-Empress v. Juggernath,
68, 69
Queen-Empress v. Khetter K.
Mitter, 146
Queen-Empress v. Mithu Lal, 231
Queen-Empress v. Moore, 233, 362
Queen-Empress v. Muttirulandi,
68, 231, 237, 346
Queen-Empress v. Nihal Chand,
228, 232
Queen-Empress v. Palani, 198
Queen-Empress v. Rahat Ali
Khan, 106, 233, 346
Queen-Empress v. Somasunda-
ram, 65, 235, 239
Queen-Empress v. Trailokya Nath
Barat, 33
Queen-Empress v. Venkatara-
yudu, 191, 198, 231, 234
Queen-Empress v. Virasami, 240

R

R. v. Boardman, 67, 347
R. v. Carlisle, 258
R. v. Govind, 29
R. v. Jati Satu, 229
R. v. Jetha Moti, 229
R. v. Sambhu, 305
R. D. Sethua v. Mirza Mahomed
Shiraji, 18, 162
Rachulal v. Kandhai Lal, 172
Radha Bai v. Nathuram, 5, 33, 63,
104, 109, 244, 245
Radha Kanta Shaha v. Abhoy
Churn, 33, 110, 171, 174, 283
Raghia v. Dharama, 117
Raghu Nandan v. Ram Chandra,
56
Rahim Buksh v. M. Ayub, 158,
165
Rahim Tolla v. Murray, 176
Rainier v. Gould, 5, 176, 264, 266
Raj Chandra v. Gobind Chandra,
198
Raj Kumar Ram Gopal v. Ram
Dutt, 51
Raj Kumar Singh v. Ram Suhay,
350
Raj Raghubir v. Jai Indra
Bahadur Singh, 358
Raj Saran Minor, etc., v. Jati
Prasad, 184
Rajammal v. Authiammal, 71
Rajangram Aiyar v. Rajaman-
gama Minor etc., 39
Raja of Bobbili v. Inuganti, 158,
165, 196
Raja Udajiram v. Rajeshwar, 41
Rajendra Narayan v. Ghafoor-
khan, 183, 200, 201
Rajeshwar Bagchi v. Emperor, 232
Rakhal Das v. Rajchandra, 63
Ralli Brothers, In re, 19, 272
Raman Chetty v. Nagappa Chetty,
200
Ramaprasad v. Srinivas, 7
Ramaswami v. Pappu, 359
Ramaswami v. Ramaswami, 181,
183
Ramaswami Aiyar v. Gnanamani
Nachair, 86, 91, 249, 253, 350
Ramaswami v. T. R. Raghava,
249

Ramayya v. Shanmugam, 112	Rangoon Club In Re., 83, 303
Ram Bahadur v. Dusuri Rant, 170, 174	Rangha Rau v. Bhavayamani, 166, 196
Ram Buran Singn v. Puja Singh, 183	Rangaswami Pillai v. Sankarlingam, 11
Ram Chnd Sur v. Issar Chandra Giri & others, 29, 49	Rangaswami v. Nachiappa, 352
Ram Chandra Basudevshet v. Babaji Kushaji, 301, 316	Rangovabani v. Tulja Ram, 118
Ram Chandra v. Dhondoo, 287, 315	Ratanchand v. Asa Singh, 251
Ram Chandra Dutt v. Chunder Coomar, 38	Ratanchand v. Ghasita Mal, 42
Ram Chandra Row v. Sesha Aiyangar, 58	Ratan Singh v. Pirbhu Dayal, 64, 77, 181
Ram Churn Mullick v. Luchmee Chand, 25	Ratulal Rangildas v. Vrijbhukhan Parabhuram, 11, 25
Ramdas v. Inayat, 161, 164, 249, 253, 255, 256	Reference (2 All. 654) 20, 22, 47, 87, 95
Ram Doyal v. Kumar Gangadhar Bogla, 80, 252	" (2 All. 664) 41, 144, 301, 332
Ramen Chetty v. Mahomed Ghouse, 4, 7, 25, 139, 239, 247	" (3 All. 788), 29, 49, 359
Rameshwar Prasad, In the matter of, 51, 267	" (5 All. 360), 316
Rameshwar Singh Bahadur v. Shaikh Kitab Ali, 46	" (5 All. 560), 301
Ramjivan v. Lachimi, 241	" (16 All. 132), 347
Ramkrishna In Re., 132	" (16 All. L. J. 49), 222
Ram Krishna v. Vithu, 183, 310	" (16 All. W. N. 197), 135, 281
Ram Kumar v. Kushal, 144, 230, 281	" (17 All. 55), 46, 87, 94, 95
Ram Pitam v. Shooobul Chandra, 45	" (17 All. 211), 20
Ramprosad v. Srinivas Balmukund, 7, 34, 121, 239	" (19 All. 293), 300
Ram Raghubir Lal v. The United Refineries, 172	" (23 All. 213) 33, 186, 187
Ramsaran v. Tulsi Ram, 171	" (24 All. 372), 351
Ramsami v. Ramsami, 202	" (24 All. 374), 176, 196
Ram Saran Das v. Yudhistir Prosad and another, 359	" (36 All. 137), 41
Ram Sarup v. Jasodha, 108, 172	" (37 All. 125), 220
Ram Sing v. Man Sing, 201	" (37 All. 150), 360
Ramaswami Aiyangar, v. T. Raghava Aiyanga, 254	" (37 All. 159), 5, 70, 113
Ram Singh v. Parumal, 58, 62, 120, 256	" (37 All. 264), 9, 83, 113
Ramier v. Gould, 5	" (40 All. 128), 192, 217, 219
Ranchordas v. Bhimabai, 20	" (52 All. 844), 357
Rangalal Kaluram v. Kedar Nath, 178, 184, 185, 227	" (5 Bom. 476), 268
Rang Lal v. Emperor, 199, 235	" (5 Bom. 478), 19, 310
	" (20 Bom. 210), 71
	" (20 Bom. 432), 30, 298
	" (24 Bom. 257), 131, 135, 366
	" (1 Bom. L.R. 7), 51, 267, 324
	" (4 Bom. L.R. 430), 133
	" (4 Bom. L.R. 912), 61, 62, 267, 268
	" (5 Bom. L.R. 523), 133

Reference (8 Cal. 254), 87, 94 314,	Reference (8 Mad. 532), 33, 35
" 324	" (8 Mad. 564), 181, 185,
" (10 Cal. 92), 131, 132,	" 226, 227
" 290	" (9 Mad. 138), 239
" (19 Cal. 499), 54, 135,	" (9 Mad. 140), 347
" 337	" (9 Mad. 146), 79
" (23 Cal. 283), 29, 89,	" (9 Mad. 358), 340
" 296, 367	" (10 Mad. 27), 269, 271
" (30 Cal. 365), 17	" (10 Mad. 64), 325, 347
" (30 Cal. 565), 5, 55, 99	" (10 Mad. 85), 68, 346
" (29 C.W.N. 851), 286,	" (10 Mad. 158), 20
" 356	" (11 Mad. 18), 224
" (27 Ind. Cas. 73), 9	" (11 Mad. 31), 36
" (137 I.C. 337), 30	" (11 Mad. 37), 3, 152, 209
" (1 L.B.R. 205), 84	" (11 Mad. 38), 220, 223
" (1 L.B.R. 281), 68	" (11 Mad. 39), 52, 269,
" (2 L.B.R. 307), 67, 69	" 310, 324, 358
" (4 L.B.R. 2), 51	" (11 Mad. 40), 89, 114,
" (5 L.B.R. 157), 271	" 115, 193, 196
" (1 Mad. 133), 85, 86,	" (11 Mad. 216), 268, 368
" 310	" (11 Mad. 377), 33
" (4 Mad. 26), 79	" (12 Mad. 69), 309
" (5 Mad. 15), 366	" (12 Mad. 89), 368
" (5 Mad. 18), 132, 133,	" (12 Mad. 189), 58
" 291	" (12 Mad. 198), 42, 351
" (5 Mad. 187), 297	" (13 Mad. 147), 20
" (5 Mad. 394), 8, 9, 24,	" (13 Mad. 149), 26
" 155, 169, 190, 191	" (14 Mad. 244), 79
" (7 Mad. 155), 314	" (14 Mad. 255), 4, 117,
" (7 Mad. 176), 33, 104,	" 118, 167, 169
" 109, 244	" (15 Mad. 134), 53, 269
" (7 Mad. 178 Note), 33	" (15 Mad. 164), 39, 144,
" (7 Mad. 203), 94, 314,	" 332
" 315	" (15 Mad. 193), 21
" (7 Mad. 209), 52, 358	" (15 Mad. 259), 8, 169,
" (7 Mad. 280), 269	" 226, 353
" (7 Mad. 349), 70	" (15 Mad. 386), 56, 90
" (7 Mad. 350), 30, 351,	" (16 Mad. 419), 31
" 352, 366	" (16 Mad. 459), 210
" (7 Mad. 385), 43	" (17 Mad. 280), 266
" (7 Mad. 421), 132, 291	" (18 Mad. 233), 42, 43, 332,
" (8 Mad. 11), 68, 231,	" 351, 352
" 236, 237, 238, 346	" (18 Mad. 235), 209, 291
" (8 Mad. 15), 22, 79, 164,	" (20 Mad. 27), 296
" 323	" (21 Mad. 358), 47, 50
" (8 Mad. 81), 237	" (21 Mad. 422), 31, 70
" (8 Mad. 87), 8, 20, 21, 64,	" (22 Mad. 164), 323
" 169	" (23 Mad. 207), 50, 303, 308,
" (8 Mad. 104), 175, 323,	" 324
" 326	" (24 Mad. 176), 87, 89,
" (8 Mad. 453), 139, 308,	" (25 Mad. 3), 85, 86, 88, 315
" 361	" (25 Mad. 751), 151, 190,
" (8 Mad. 523), 244	" 219, 220, 222

Reference (25 Mad. 752), 2, 148,
188, 192, 193, 194, 197,
201, 216, 217, 219, 220,
222, 226
" (26 Mad. 473), 83, 315
" (37 Mad. 17), 358
" (46 Mad. 259), 19
" (2 M. L. J. 178), 90
" (3 M. H. C. R. 27), 229
" (4 M. H. C. R. 26), 19
" (6 M.H.C.R. App. xxxvi),
84
" (1883 P. J. 364), 71, 77, 361
" (1884 P. J. 13), 249
" (1894 P. J. 141), 221
" (102 P. R. 1882), 314
" (5 P. R. 1886), 10, 239
" (15 P. R. 1910), 85, 88,
89, 355
" (85 P. R. 1895), 347
" (13 W. R. 353), 269, 358
" (16 W. R. 208), 5, 30, 297
Reg v. Overton, 68
Rela Mall v. Shoran, 254
*Revenue Board, Madras v. Mrs.
Orr*, 49
Revenue Stamp case, In Re., 265
*Reversionary Interest Society Ltd
v. Inland Revenue Commis-
sioners*, 259
Robert v. Shircore, 18, 20, 22, 263
Roots v. Darwer, 290
Rozario v. Harballabh Onkerjee,
19, 21
Runjeet x. Kooer Gunrai, 38
Rupchand v. Barkuvalad Suku,
22
Rustomji v. Kala Singh, 340
*Rustomji Edulji Cross v. Cursetji
Surabji*, 166
Rustomji v. Vinayak Gangadhar,
159, 164, 172

S

S. A. Ralli v. Caramalli Fazl, 107
328
*Sadasheo Waman Kalkar v.
R. V. Mahojani*, 79, 260
*Sadasook Agarwala v. Baikunta
Nath*, 36, 250
Sadik Ali v. Rani Kunno, 105
Safdar Ali v. Lachman Das, 226,
352

Saiyed Abid v. Ashgar, 300
Sakal Chand v. Gulab Chand, 20
Sakharam x. Ramchandra, 7, 10,
34, 139, 247, 283
*Sakharrm Krishnaji v. Madan
Krishnaji*, 39
Salamalai v. Vadamalai, 107
Saligram v. Radhashyam, 172
Samad Mir v. Brij Lal, 34, 104,
109
*Somarattmal Uttamchand v. Go-
vind*, 29, 264, 272, 307
*Sambhu Chandra v. Krishna Ch-
aran*, 126, 127, 286
Sambhu Dayal In Re., 85
Saminath v. Radha Krishna, 172
Saminathiyan v. Saminathiyan.
46
Samsuddin Dakhli, 127
Sankarlingam v. Subban, 305
Sarada Nath v. Gobind Chandra,
34, 104, 283
*Sarat Chandra Ray Chowdhury
v. Rajanimohan Ray & others.*
359
Sarat Kumari v. Uma Prosad, 6
*Sarbo Mussulmani v. Safar Man-
dal*, 356
*Sarnalinga Mudali v. Pachi Naic-
ken*, 59
*Saroj Bandhu Chowdhury v.
Jnanda Sundari Deby*, 267,
361
Sarojini v. Gnanendra, 29
*Sashi Bhusan Bannerjee v. Tara
Chand Kar*, 10, 199
Sashi Mohan v. Kumud Kumar,
154
*Satya Narayan Chowdhury v.
Mahadeo Prosad Sahu*, 79
*Satya Priya Ghosal v. Gobinda
Mohan*, 60
*Sayad Golumali v. Miyabhai Ma-
homadahai*, 112
*Sayad Shikander Shah v. Firm
of Bhai Ram, etc.*, 64, 65
Scott v. Banma, 297
Searle v. Western, 25
*Secretary to the Commissioner of
Salt, Abkri, etc.* 45, 85, 88, 90,
94, 348
*Secretary to the Commissioner of
Salt v. Mrs. Orr.*, 50, 315, 368

- Secretary to the Commissioner of
 Salt *v.* South India Bank, 262
 Secretary of State for India in
 Council *v.* Basharatullah, 191,
 200, 204
 Sennandan *v.* Kallakiran, 166
 Seshachellam *n.* Alwar Chetty, 41
 Seth Rustomji *v.* The Crown, 29,
 30
 Sewell *v.* Burdick, 17
 Sha Nagindas *v.* Halalkore
 Nathwa, 127, 131, 132, 291
 Shadilal *v.* Emperor, 69, 232
 Shadilal *v.* Thakurdas, 52
 Shambhu Chandra *v.* Krishna
 Chandra, 128
 Sham Das *v.* Khiman Lal, 78,
 110
 Shankar *v.* Mukta, 251
 Shankar Lal *v.* Sukhrani, 115,
 161
 Shanmuganatha *v.* Srinivasa, 172
 Shantappa Chidambaraya *v.* Su-
 brao Ram Chandra, 132, 291
 Shebbayya *v.* Venkata Subbayya,
 136
 Sheikh Adam *v.* Chandra Sankar,
 294
 Sheikh Akbar *v.* Sheikh Khan,
 166, 170
 Sheikh Ewaj *v.* Mukuma Bibi, 40
 Sheikh Rafiuddin *v.* Latif Ahmed,
 3, 187, 213, 332
 Sheikh Rahomatulla *v.* Sariut-
 ullah, 185
 Sheodas *v.* Kanhaiya Lal, 13, 14
 Sheologun *v.* Budree Das, 315
 Sheshamma, In the application
 of, 259
 Sheshayya *v.* Subhanna, 146
 Sheshayya *v.* Venkata Subbayya,
 47
 Shidappa *v.* Irava, 179, 181, 183
 Shidraj Bhojraj *v.* Dari, 363
 Shir-core *v.* Queen Empress, 347
 Shreeput Bulwant Rao *v.* Futteh
 Ooddeen, 15
 Shyam Sundar Lall Shankar
 Lall, In re., 35, 220, 250, 254,
 266
 Simulu E. Rowthan *v.* Abdul
 Rahaman, 120
 Sinapaya *v.* Sivapa, 32, 91, 131
 Sital Prasad *v.* Monahar Das, 255
 Sital Purshad *v.* Luchmi Nara-
 yan, 41
 Sital Purshad *v.* Luchmi Purshad,
 31, 298
 Sitaram *v.* Ram Prasad Ram, 179,
 180, 249, 252
 Sitaram *v.* Thakur Das, 159, 178,
 248, 255, 256
 Sitaram Krishna *v.* Daji Devaji,
 111, 113
 Sivasami Chetty *v.* Sevugan
 Chetty, 35
 Sodamani *v.* Soma Sundara, 136
 Smith *v.* Guneshee Lal, 347
 Someshwad Dutt, In Re., 70
 Solamalai *v.* Vadamal, 108, 177,
 180
 Somwarpuri *v.* Matabadalai, 80
 Sonaka Chowdhurani *v.* Bhoo-
 hunjoy, 199, 202, 204
 Soodamani Pattar *v.* Soma Sun-
 dara, 138
 Soopromonian *v.* Heilgers, 293
 Soorjharee Koonwar *v.* Rameswar
 Pandey,—359
 Sorabji *v.* Justices of the Peace, 5
 Spawforth *v.* Alexander, 67, 347
 Spencer *v.* Emamooddeen, 267
 Speyer Brothers *v.* Commissioners
 of Inland Revenue, 48, 94
 Sreemutty Noor Bibi *v.* Sheikh
 Rumjan, 34, 117
 Sri Raja Lakshmi *v.* Sri Raja Sri
 Krishna, 298
 Srinath Das *v.* Angud Singh, 108,
 172, 175
 Srinath Shaha *v.* Sarada Gobind,
 180
 Stamp Act, In Re., (24 Bom. 257),
 131, 135, 366
 Stamp Act, In re, (56 Cal. 233)
 —16
 Stamp Act, In re. (38 P.L.R.
 1912), 11, 25
 Stamp duty, In Re., the deed
 executed by by etc., 324
 Subbaraya *v.* Sadasiva, 42
 Subbaraya *v.* Vythilinga, 77, 294
 Subedar Hussensha Khan, In
 Re., 70, 71
 Sudhan *x.* Barn,—256
 Subhabhat *v.* Basudeb Bhat, 49

Sudhir Chandra *v.* Gobind Chandra, 172
 Sudhir Chandra, *v.* Kamal Chandra, 171
 Suffell *v.* Bank of England, 110
 Sugappa *v.* Govindappa, 181
 Sukh Dial *v.* Fani Ram, 42, 164
 Sunder Das *v.* The People's Bank of India, 108, 162, 179
 Sunder Koer *v.* Emperor, 45, 47
 Sunitibala Debi *v.* Dhara Sundari Debi, 21
 Superintendent of stamps *v.* Chimanlal, 40
 Surajanarain *v.* Pratap Narain, 180, 181
 Suraj Lal *v.* Anant Lal, 173
 Surajmal *v.* Bank of Behar, 35
 Suraj Mull *v.* Hudson, 7, 117
 Surajmull Muralidhar *v.* Anant Lal Damani, 248, 250, 251, 254
 Surajmull Nagoremull *v.* Triton Insurance Co., Ltd., 3, 100
 Surajnarain *v.* Ikbai Narain, 38
 Surajnarain *v.* Narendra Thatray, 255
 Suraj Prasad *v.* W. W. Boucke, 250
 Surendranath *v.* Emperor, 114
 Sureshwar *v.* Maheshrani, —352
 Surju Prasad *v.* Bhowani Sahai, 50, 51, 323
 Sutherland Clark *v.* Mrs. Rose Grimshaw, 262
 Swayne *v.* Commissioners of Inland Revenue, 130
 Syed Basiruddin Ahmed *v.* Kalika Prosad Singh, 185, 226
 Syed Karamat Ali *v.* Moonshee Abdul Wahab, 138, 168
 Syed Mohammad Hameed *v.* Syed Manzan Hussain, 42, 281
 Syed Safdar Raja *v.* Amzad, 45

T

T. Katchi Rowther *v.* R. Naina Mohamed, 283
 T. Kistnasamy *v.* Municipal Commissioners, 138
 Tadelepalepeda *v.* Tadelepalei Richayyar, 41
 Tapiram *v.* Jugai Kishore, 8, 112, 172

Tara Chand *v.* Louis Dreyfus & Co., 88, 270
 Tariney Churn *v.* Abdur Rahman, 250
 Tej Protap *v.* Champakalee, 38
 Tej Ram and another *v.* Maqbul Shah and another, 85, 86, 88, 89, 323
 Tek Lal Sing *v.* Sripati, 42, 281
 Tetai Ahom *v.* Gogai Gure, 367
 Thackersay *v.* Tirshendoss, 59
 Thaji Beebi *v.* Tirumalaiappa, 158, 159, 160, 161, 165, 166, 176, 177
 Thakurdas and others *v.* Emperor, 154, 217
 Thakur Das *v.* Futteh Mull, 15
 Thakurain Abhayraj Kuar *v.* Data Din, 21, 264
 Thakurain Balraj Kunkar *v.* Rai Jagatpal Sing, 6
 Thakuri Molla *v.* Ram Tahal Tewari, 36, 107
 Thankaminal *v.* Kunhounna, 58
 Thiruvengadathamia *v.* Mungiah, 41, 332
 Thomon's Policy In the matter of, 78, 115, 221, 222
 Thummalaganti *v.* Papuri Peddanna, 201
 Tiru Pathi *v.* Rama Raddi, 59, 62, 254
 Tribeni *v.* Sahu, 9, 110, 163
 Tribhowan *v.* Krishnan, 52
 Tribhubowan *v.* Pandurang, 57, 340
 Trickumji Damji *v.* Virji, 56, 167, 338
 Tucaram *v.* Sonaji, 4, 151, 187, 197
 Tucaram Hari Atre, In Re., 91
 Tun Hlaing *v.* Ma keha Bu, 108

U

Udhoshah *v.* Hira Shah, 161
 Udit Upadhaya *v.* Bhawani Din, 62, 251, 252, 256, 266
 U. K. Janardhan Rao *v.* Secretary of State for India, 76, 133, 220
 Umba *v.* Harju, 162
 Umda Bibi *v.* Tikai Ram, 192, 197

Upendranath Banerji & another
v. Umesh Chandra Banerjee,
40

Usuf Dadabhai v. Chand Mahom-
med, 221

V

V. R. Rakkappan Ambalam v.
C. Suppiah Ambalam, 167

V. Ramaswami Aiyar v. Gnana-
mani Nachiar, 86, 91, 249, 253,
350

V. R. S. A. R. Ramen Chetty, In
Re., 37, 266

Vadamalai v. Subramania, 58

Valiappa v. Mahomed Khasim,
172

Vaman Trimbak Joshi v. Changi
Damodar, 53

Varajlal Mulji v. Secretary of
State for India, 50, 52, 322

Vasanji Hasibhai, In Re., 42

Vasudeo v. Bhan Lakhshman,
50

Vasudevacharaya v. Munici-
pality of Sholapur, 105

Veerappa Naidu v. Avudayam-
mal, 313

Veerappudayan v. Oganthapuda-
yan, 19

Venkanna v. Parsuram, 179

Venkataraman Iyer v. Narsingh
Rao, 56, 77, 339

Venkataraman Ganap Hedge v.
Sankarnarayan, 103, 163, 186,
187

Venkatesh Prabhu v. Subraya,
114

Venkateshwar v. Keshavashetti,
50

Venkateshwara Iyer v. Rama-
natla Dheskshita, 181

Venkatrama Sujas v. Chella
Pillai, 182

Venku v. Sitaram, 14, 19, 20, 21,
64

Vinayak Lakshman v. Mahadaji
Damodar, 6

Virbhandrapa v. Bhimaji Balaji,
106, 107, 108, 172

Vishnu Keshav Sathe, In Re., 132

Vithal Gobind, In Re., 86, 91

Vithu v. Naidu, 127

Vittraji Somaji v. Tukaram Gan-
gaji, 46

Vohra Mahamadali v. Ram Chan-
dra, 30, 268, 270

Volkart Brothers v. Vettivelu
Nadani, 29, 264, 272

W

Waddington v. Francis, 91

Wadhawa Mal v. Karim Bux, 18,
22

Waman Martand Bhalerao v. The
Commissioners, 132, 220, 291

West Middlesex Water Works
v. Suwer Kropp, 271

Ward v. Lord Londesborough,
317

Wilaity v. Pir Baksh, 87, 90, 186

Wrightley v. Smith, 268

Y

Yarlagadda Veeraghayya v.
Garatla Ramayya, 172

Yeo Eng Pwa v. Chetty firm of
R. M. A. R. R. M., 13, 23, 59

CONTENTS.

CHAPTER II.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER I.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Instruments chargeable with duty.
4. Several instruments used in single transaction of sale, mortgage or settlement.
5. Instruments relating to several distinct matters.
6. Instruments coming within several descriptions in Schedule I.
7. Policies of sea-insurance.
8. Bonds, debentures or other securities issued on loans under Act XI, 1879.
9. Power to reduce, remit or compound duties.

B.—Of Stamps and the mode of using them.

10. Duties how to be paid.
11. Use of adhesive stamps.
12. Cancellation of adhesive stamps.
13. Instruments stamped with impressed stamps how to be written.
14. Only one instrument to be on same stamp.
15. Instruments written contrary to section 13 or 14 deemed unstamped.
16. Denoting duty.

C.—Of the time of stamping Instruments.

17. Instruments executed in British India.
18. Instruments other than bills, cheques and notes executed out of British India.
19. Bills, cheques and notes drawn out of British India.

D.—Of Valuation for Duty.

20. Conversion of amount expressed in foreign currencies.
21. Stock and marketable securities how to be valued.
22. Effect of statement of rate of exchange or average price.

SECTIONS.

23. Instruments reserving interest.
- 23A. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

- 24. How transfer in consideration debt, or subject to future payment, etc., to be charged.
- 25. Valuation in case of annuity, etc. •
- 26. Stamp where value of subject-matter is indeterminate.
- 27. Facts affecting duty to be set forth in instrument.
- 28. Direction as to duty in case of certain conveyances.

E.—Duty by whom payable.

- 29. Duties by whom payable.
- 30. Obligation to give receipt in certain cases.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

- 31. Adjudication as to proper stamp.
- 32. Certificate by Collector.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

- 33. Examination and impounding of instruments.
- 34. Special provision as to unstamped receipts.
- 35. Instruments not duly stamped inadmissible in evidence, etc.
- 36. Admission of instrument where not to be questioned.
- 37. Admission of improperly stamped instruments.
- 38. Instruments impounded how dealt with.
- 39. Collector's power to refund penalty paid under section 38, sub-section (1).
- 40. Collector's power to stamp instruments impounded.
- 41. Instruments unduly stamped by accident.
- 42. Endorsement of instruments on which duty has been paid under sections 35, 40 or 41.
- 43. Prosecution for offence against Stamp-law.
- 44. Persons paying duty or penalty may recover same in certain cases.
- 45. Power to revenue-authority to refund penalty or excess duty in certain cases.
- 46. Non-liability for loss of instruments sent under section 38.
- 47. Power of payer to stamp bills, promissory notes and cheques received by him unstamped.
- 48. Recovery of duties and penalties.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

SECTIONS.

- 49. Allowance for spoiled stamps.
- 50. Application for relief under section 49 when to be made.
- 51. Allowance in cases of printed forms no longer required by corporations.
- 52. Allowance for misused stamps.
- 53. Allowance for spoiled or misused stamps how to be made.
- 54. Allowance for stamps not required for use.
- 55. Allowance on renewal of certain debentures.

CHAPTER VI.

REFERENCE AND REVISION.

56. Control of, and statement of case to, Chief Controlling Revenue-authority.
57. Statement of case by Chief Controlling Revenue-authority to High Court or Chief Court.
58. Power of High Court or Chief Court to call for further particulars as to cases stated.
59. Procedure in disposing of case stated.
60. Statement of case by other Courts to High Court or Chief Court.
61. Revision of certain decisions of Courts regarding the sufficiency of stamps.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

62. Penalty for executing, etc., instrument not duly stamped.
63. Penalty for failure to cancel adhesive stamp.
64. Penalty for omission to comply with provisions of section 27.
65. Penalty for refusal to give receipt, and for devices to evade duty on receipt.
66. Penalty for not making out policy, or making one not duly stamped.
67. Penalty for not drawing full number of bills or marine policies purporting to be in sets.
68. Penalty for post-dating bills, and for other devices to defraud the revenue.
69. Penalty for breach of rule relating to sale of stamps and for unauthorised sale.
70. Institution and conduct of prosecutions.
71. Jurisdiction of Magistrates.
72. Place of trial.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

SECTIONS.

73. Books, etc., to be open to inspection.
74. Powers to make rules relating to sale of stamps.
75. Power to make rules generally to carry out Act.
76. Publication of rules.
- 76A. Delegation of certain powers.
77. Saving as to court-fees.
78. Act to be translated and sold chiefly.
79. Repealed.

SCHEDULE I.—STAMP-DUTY ON INSTRUMENTS.

SCHEDULE II.—REPEALED.

THE INDIAN STAMP ACT

Act No. II of 1899.

[27th January, 1899.]

[AS MODIFIED UPTO DEC. 1932.]

An Act to consolidate and amend the law
relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps ; It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas, and the Pargana of Spiti ; and

(3) It shall come into force on the first day of July, 1899.

NOTES.

For Statement of Objects and Reasons, *see* Gazette of India, 1899, Pt. V, p. 175 ; for Report of the Select Committee, *see* *ibid*, 1898, Pt. V, p. 231 and Appendix ; and for Proceedings in Council, *see* *ibid*, 1898, Pt. VI, p. 231 ; *ibid*, 1898, Pt. VI, pp. 10 and 278 ; and *ibid*, 1899, Pt. VI, p. 5.

Extent.—This Act has been declared to be in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, Bihar and Orissa Code.

It has been declared to be in force in the sub-division of Angul by notification under s. 3 of the Angul Laws Regulation, 1913 (3 of 1913), Bihar and Orissa Code.

Under s. 2 of the Assam Frontier Tracts Regulation, 1880 (2 of 1880), Assam Code, it has been declared that the Act shall cease to be in force in the Garo Hills, the Khasi and Jaintia Hills, and the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hills Tract and the Dibrugarh Frontier Tract, and under ss. 5 and 5A of the Scheduled Districts Act, 1874 (14 of 1874), the Act was extended to the places above-mentioned with the proviso that it shall not apply to persons being natives of these areas who are assessed to house-tax instead of land-revenue—see Gazette of India, 1903, Pt. I, p. 175. Similarly, it has been declared that the Act shall cease to be in force in the Lushai Hills—see Gazette of India, 1904, Pt. I, p. 93; and under ss. 5 and 5A of the Scheduled Districts Act, 1874 (14 of 1874), it was extended to the Lushai Hills with the proviso that it shall not apply to natives of the district except in such places and cases as may be withdrawn from the operation of the proviso—see Gazette of India, 1904, Pt. I, p. 913, and Assam Gazette, 1904, Pt. II, p. 787.

The words "Upper Burma" which occurred between the expressions "inclusive of" and "British Baluchistan" were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

British India.—*British India* shall mean all the territories and places within His Majesty's dominions, which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India—*The General Clauses Act*, (Act X of 1897), s. 3 (7). British India includes the Agency Tracts of Vizagapatam included in the Scheduled Districts, *Collector of Vizagapatam v. K. C. K. Patnait*, 52 Mad. 1 : 55 M. L. J. 584 : 28 L. W. 614 : 1928 A. I. R. (Mad.) 1181 : 115 I. C. 824.

Commencement.—Commencement used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.—*The General Clauses Act* (Act X of 1897), s. 3 (12). See also s. 5 (3) of the same Act.

Consolidate.—The very object of a consolidating statute is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act was passed.—*The Administrator General of Bengal v. Premal Mullick*, 22 I. A. 107 : 22 Cal. 788.

Scope.—The Stamp Act was regarded as a complete Code, *Reference under Stamp Act*, s. 57; 25 Mad. 752. The essence of a Code is to be *exhaustive* as regards the matter with which it deals, *Gokul Mandar v. Pudemmanund Singh*, 29 I. A. 196 : 29 Cal. 707 : 6 C. W. N. 823 : 4 Bom. L. R. 793 (P. C.).

The object of a codification is that the law should henceforth be ascertained by *interpreting the language used* instead of searching the authorities to discover what may be the law as laid down in prior decisions, *Narendra Nath Sarkar v. Kamal Basini Dassi*, 23 I. A. 18 : 23 Cal. 563 : 6 M. L. J. 71 P. C.

Under the provisions of s. 3 of the Act, *instruments* as defined in s. 2 (14) of this Act, are made liable to duty to the extent specified in the Schedule. The stamp Act provides for duties leviable upon instruments and if a person can carry out his transaction on oral agreements only, he is exempt from duties. In most cases, the amount of duty depends on consideration as set forth in the instrument.

This Act applies to non-judicial stamps.—There are two distinct types of stamps, judicial and non-judicial. Judicial stamps are surcharged with words 'Court fees' and are for use in Courts and some offices under the provisions of the Court Fees Act. Non-judicial stamps are for use in transactions between persons where a written instrument is used in such transaction. The stamps are to be used as specified in the rules, otherwise the instrument will be deemed unstamped. For instance a decree for partition which is an instrument of partition should be engrossed on a non-judicial stamp and if written on a Court Fee stamp the instrument is unstamped, *Shaikh Rafiuddin v. Latif Ahmad*, 14 C. W. N. 1101: 12 C. L. J. 324: 2 I. C. 94.

(1) Non-judicial stamps may be *impressed* i.e. as defined in s. 2 (13) of this Act. These stamps may be coloured (rule 8), or perforated by proper officer (rule 10). An endorsement by the Collector that proper stamp duties have been paid has been held to be an impressed stamp, *Reference under s. 46 of the Indian Stamp Act*, 11 Mad. 37.

(2) *Adhesive stamps.*—These stamps are printed on small pieces of paper and affixed to the instrument. The use of these are indicated in s. 11 of the Act, and rules 13 to 17 in the Rules. There are special adhesive stamps to be used in particular instruments.

Postage stamps of the value of one anna, two annas and four annas may be used instead of stamps under Rule 16.

Object of the Act.—The object of the Stamp Act is not to alter the terms of the bargain between the parties but to protect the revenue by excluding proof of the bargain by an instrument unduly stamped, *Kumar Brojomohan Singh v. Lachmi Narain Agarwala*, 5 Pat. L.J. 660: 1 Pat. L.T. 360: 1920 Pat. C.W.N. 289 (296): 65 Ind. Cas. 184; affirmed by P. C. in *Lachminarayan v. Rameshwar*, 51 I.A. 332: 4 Pat. 34. "The enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases for which a penalty is exigible." *Surajmull Nagoremull v. The Triton Insurance Co. Ltd.*, 52 Cal. 408: 29 C.W.N. 893 (895): 22 All. L.J. 105: 1925 M.W.N. 257: 48 M.L.J. 136: 86 I.C. 545: 1925 A.I.R. 83 (P.C.).

The stamp Act is a purely fiscal regulation. Its sole object is to increase the revenue, and all its provisions must be construed as having in view the protection of revenue, *Deva Chand v. Hira Chand Kamaraj*, 13 Bom. 449 (455). The Stamp Act is a fiscal enactment and its primary object is to prevent evasion of revenue it imposes. This object is attained by excluding documents which are not stamped or insufficiently stamped from evidence. Apart from this object,

it may, in other respects, be considered in favour of the subject. *Narain Das v. Jessomal*, 15 S.L.R. 135 : 65 Ind. Cas. 37. The object of the Act is not to exclude evidence, or to enable parties to avoid their obligations on technical grounds, but to obtain revenue for the Government of British India, *Tukaram v. Sonaji*, 7 N.L.R. 26 (29) : 10 I.C. 702.

Application.—The provisions of the Stamp Act are not applicable to instruments executed out of British India and which do not affect any property situate in British India or to any matter or thing done or to be done in British India, *In Re Mawchi Mines Ltd.*, 11 Bur. L.T. 126 : 48 I.C. 187. See also *Reference under Stamp Act*, 14 Mad. 255 F.B; but these when liable to duty must be stamped within 3 months after these are received in British India. See *Sec. 18, infra*.

Retrospective operation of Statute.—It is not in accordance with sound principles of interpretation of statutes to give them a retrospective effect, *Muhammad Abdus Samad v. Qurban Husain*, 31 I. A. 30 : 29 All. 118 : 8 C.W.N. 201 P.C.; *Promothanath v. Sourav Dass*, 47 Cal. 1108 : 24 C.W.N. 1011. But to this rule there are two exceptions, viz.,

(a) when the amending Acts are expressly declared to be retrospective.

(b) where they only affect the procedure of the Court, *Jaramal v. Muktabai*, 14 Bom. 516. Changes in law relating to procedure have a retrospective effect, *Promothanath v. Sourav Dass*, 47 Cal. 1108; 24 C.W.N. 1011; *Balkrishna v. Bapu Yesaji*, 19 Bom. 204.

The legislature, while possessing the power to divest existing rights, is not to be understood as intending to exercise that power retrospectively to any greater extent than express term of, or necessary implication from its language, requires, *Ichharam Kalidas v. Govindram Bhowani Shankar*, 5 Bom. 653 (658-659). See also s. 7 of *The General Clauses Act* (Act X of 1897). S. 36 of the present Stamp Act (Act II of 1899) appears to be applicable to documents executed when Act XXXVI of 1860 was in force as to insufficiently stamped documents under the present Act, *Niratan v. Abdul Gafur*, 32 C.L.J. 75.

Interpretation of Statutes.—When words used are plain and meaning clear the Courts must give effect to the language in spite of hardship, *Balkaran Rai v. Gobind Nath Tewary*, 12 All. 129 : (1890) 10 All. W.N. 39. The language of an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *Narendra Nath Sircar v. Kamal Basini Dass*, 23 I.A. 18 : 23 Cal. 563 : 6 M.L.J. 71 P. C. But if the language be ambiguous then the previous history may be considered. *Bank of England v. Vagliano Bros.*, 1891 App. Cas. 107 (144); *Nilmoni Kar v. Raja Sati Prasad Garga and Other*, 32 C.L.J. 302.

Principles of construction.—The Stamp Act of India (1879) ought to be construed on the same principles of the Stamp Act in England and the earlier Stamp Acts in this country, *Ramen Chetty v. Mahomed*

Ghous, 16 Cal. 435. An Act of this nature must be construed strictly, *Empress v. Soddanund Mahanty*, 8 Cal. 259; *Reference under the Stamp Act of 1899*, 30 Cal. 565. In *re Nirabai*, 29 Bom. 203 : 6 Bom. L.R. 844. See also *Radha Bai v. Nathuram*, 13 All. 66 : (1890) 10 All. W. N. 238. "In construing Acts of the Legislature which impose a tax, namely that a duty or tax cannot be imposed except by clear and distinct words and that the Acts which impose a tax or charge upon the subject cannot be extended by implication. If the express words of the enactment do not warrant or necessitate a demand of duty or charge, it is not competent to a court of law in construing such enactment to extend it or give the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment, *Reference to the High Court re The Port Canning Land Company Ltd.*, 16 W. R. 208.

In case of an exemption.—When there is an exemption in a provision imposing a duty, the exemption must be construed strictly in favour of the state, *In re Nira Bai*, *In re Luxman and Ganpat*, 29 Bom. 203 : 6 Bom. L.R. 844. A party who pleads that his instrument comes within the exemption must prove that fact, the burden is on him. *Pinner v. Arnold*, 2 C. M. & R. 613.

In case of doubt to be construed strictly in favour of the subject. The Stamp Act being a fiscal enactment, the intention to tax a particular instrument must appear in clear and positive words, and in case of doubt, the construction should be in favour of the subject, *Ramier v. Gould*, 13 Mad. 255. See also *In re Nirabai*, 29 Bom. 203 : 6 Bom. L. R. 844 ; *Sorabji Nasarvanji Dundas v. The Justice of the Peace for the City of Bombay*, 12 B. H. C. R. 250 ; *Radha Bai v. Nathuram*, 13 All. 66 : (1890) All. W. N. 238. The Stamp Act is a revenue Act and in case of doubt the construction should be beneficial to the subject, *Anonymous case*, 10 Cal. 274 ; *Bishambar Nath v. Nand Kishore*, 15 All. 56 : (1892) All. W. N. 234. *Stamp Reference by the Board of Revenue*, 37 All. 159 : 13 All. L. J. 96 : 27 Ind. Cas. 73 F. B ; *Jai Dev Singh v. Emperor*, 8 Lah. L. T. 59.

The crown must bring the case within the letter of law.—There cannot be any equitable construction of a fiscal statute and the crown seeking to recover a tax must bring it within the letter of law, otherwise the subject is free, *Killing Valley Tea Company Ltd. v. Secretary of State for India*, 32 C. L. J. 425.

Change in the mode of interpretation.—Reversal of the previous accepted interpretation of law does not displace its application to a purchaser at court sale held when the previous interpretation was understood to contain law on the subject, *Abdul Aziz Khan v. Appayasami Naicker and others*, 27 Mad. 131 P.C. : 8 C.W.N. 188.

Where Co-ordinate sections are inconsistent.—Where the co-ordinate sections are inconsistent, an attempt should be made to reconcile them, and if that is not possible then the later section should override the former section and an enactment on a particular subject must be construed strictly against a general provision, *Amar Chand Ray v. Prasanna Dasi*, 25 C.W.N. 9.

Title.—The title of an Act may be resorted to to explain an enacting clause when doubtful, *Hurro Chunder v. Shoorodhani Debya*, 9 W.R. 402 (404) F.B.

Marginal Notes.—The marginal notes of an Act of Parliament cannot be referred to for the purpose of construing the Act, *Thakurani Balraj Kunkary. Rai Jagatpal Singh*, 31 I.A. 132 : 26 All. 393 : 1 A.L.J. 384 : 8 C.W.N. 699 (705) : 11 Bom. L. R. 516. See also cases cited in *Nawab of Murshidabad v. Gopi Nath Mondal*, 13 C.L.J. 625 ; *Kesavachetty v. The Secretary of State for India in Council*, 42 Mad. 451 (453).

Proceedings in Council.—The Court cannot refer to the proceedings in the Legislative Council to determine the meaning of the statute, *Sarat Kumari v. Uma Prosad*, 8 C.W.N. 578. Nor is it permissible to refer to the speeches of the Legal Member *Queen Empress v. Bal Gangadhar Tilak*, 22 Bom. 112 ; *Dinanath v. Raja Sati Prasad*, 27 C.W.N. 115 : 36 C.L.J. 220.

Headings.—The heading of a group of sections cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act, *Abdul Rahim v. The Municipal Commissioners of the City of Bombay*, 42 Bom. 642 (672) P.C. : 23 C.W.N. 110 : 48 I.C. 63.

Statute-Punctuation.—Whatever may have been the practice under the old Regulations, the practice would appear since the constitution of regular Legislatures in India to have been to insert stops in Bills before the Legislatures and to retain them in the authentic copies of the Acts signed by the Governor-General and published in the Gazette of India. There is no sufficient ground for refusing the assistance of the punctuation where the sense might otherwise be doubtful in Acts of the regularly constituted Legislatures of India, *Miss Taylor v. Charles Bleach*, 39 Bom. 182 (190).

Prior General provision controlled by subsequent particular provision.—Where the 1st clause refers to the general case and the second clause deals with the particular case, then the second clause should be interpreted strictly, *Lakshanan Das v. Anna*, 32 Bom. 356.

Proviso.—Provisos may be general guide in the selection of one or other of the possible constructions of the words to be found in the enactment where there is doubt as to its scope or as to the proper view to be taken of it. *Mahadeb Aon v. Chairman of the Howrah Municipality*, 11 C.L.J. 526.

Effect of repeal.—Where a document is invalid according to the law in force at the time it was executed, a subsequent repeal of that law, would not make it valid. But if it was merely inadmissible in evidence then a subsequent repeal of that law, would remove the bar, *Vinayak Lakshman v. Mahadaji Damodar*, 1873 P.J. 112. See s. 7 of the General Clauses Act (Act X of 1897).

Effect of Repeal of a repealing Act.—When a repealing Act is subsequently repealed by another Act, the last repeal does not revive the former Act or its provisions, unless there are words reviving them.

In re. Jawa Nathoo, 44 Cal. 459; *Deputy Legal Remembrancer v. Ahmed Ali*, 25 Cal. 333 : 2 C.W.N. 11; *Hari Mahateji Savarkar v. Balambhat Raghunath*, 9 Bom. 233. See s. 7 of the General Clauses Act (Act X of 1897).

Previous History.—In dealing with a consolidating Act, it is not required that each Act must be traced to its original source, and, when that is discovered, must be construed according to the state of circumstances which existed when it first became law, *Administrator General of Bengal v. Prem Lal Mullick*, 22 I.A. 107 : 22 Cal. 788. *Narendra Nath Sarkar v. Kamal Basini Dassi*, 23 I.A. 18 : 23 Cal. 563 : 6 M.L.J. 71. But if the language be ambiguous then the previous history may be considered, *Nilmoney Kar v. Raja Sat Prasad Garga and others*, 32 C.L.J. 302.

Sufficiency of stamp duty.—In determining whether a document is sufficiently stamped with reference to its admissibility in evidence the document itself must be looked at as it stands without having recourse to collateral circumstances to be proved by extraneous evidence, *Suraj Mull v. Hudson*, 24 Mad. 259 (261). See also *Raman Chetty v. Mahomed Ghose*, 16 Cal. 432; *Sakharam v. Ram Chandra*, 27 Bom. 279 (280). *Ramaprasad v. Srinivas*, 27 Bom. L.R. 1122 (1128) : 90 I.C. 685 : 1925 A.I.R. (Bom.) 527. "It appears to me that, in applying the Stamp Act the Stamp must be paid upon what is stated in the instrument, and cannot depend upon collateral evidence."—*Peacock C. J. in Chandrakant Mookerjee v. Kartik Charan Chaile*, 5 B.L.R. 103 (105) : 14 W.R. 38 (O. C.) followed in *Motilal v. Jogmohan Das*, 6 Bom. L.R. 699. The entire instrument must be considered to see whether it fairly falls within any of the descriptions of instruments required to bear a stamp under the Stamp Act, *Brojendra v. Bromomayee*, 4 Cal. 885 (887). and 11 See also the definition "duly stamped" s. 2(11) *infra* and ss. 10 and 11 and the Rules.

Penal clauses.—The stamp duty depends on the amount of consideration or immediate inducement for the undertaking and not on penal clauses in the instrument to come into operation in case of failure, *John Dayle v. Mundaree Mundul*, 5 W.R.S.C.C. 10; *J. W. Smith v. Gopal Sheikh*, 3 W.R.S.C.C. 14; *Gishorne & Co. v. Subal Bowrie*, 8 Cal. 284 : 10 C.L.R. 219. In estimating the stamp duty payable on an instrument the primary and not the covenant to pay damages in case of breach should be taken into account as such stipulation is by way of penalty in case of breach of the original covenant, *The Collector of Nimar v. Lakshmichandra of Khandra*, 98 I.C. 631 : 1927 A.I.R. (Nag.) 72. See also *In the matter of Gajari Singh*, 9 All. 585 : (1887) 7 All. W.N. 190 where the instrument was of a doubtful character.

Presumption as to sufficiency.—The court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law. *The Indian Evidence Act*, s. 89. See also *Ahmed Raza v. Abid Husain*, 43 I.A. 264 : 38 All. 494 P.C.

Title of the Instrument.—In determining what provisions of the stamp laws are applicable to a particular instrument, regard must be

had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title was a misnomer, *M. G. Pendse v. R. S. Malse*, 3 Bom. L.R. 94.

Amount of duty chargeable—When the question is as to the amount of duty chargeable on the instrument, the question is to be determined with reference to the stamp law in force at the date of execution, but if the question is as to the penalty leviable then the question is to be determined with reference to the law in force when the question arises, *Reference under Stamp Act*, s. 46, 5 Mad. 394 F.B. The various articles in the Schedule are to be referred to in determining the amount of duty payable.

In case of doubt—Where the party is in doubt as to the amount of stamp to be paid, such a party is to proceed under s. 31 of the Stamp Act.

Calculation of insufficiency—According to Madras High Court, in calculating the deficiency of stamp to be paid, the stamp (one anna) paid already is not to be taken into account, *Reference under Stamp Act*, s. 36, 8 Mad. 87; *Reference under Stamp Act*, s. 46, 15 Mad. 259. But see s. 35 of the Stamp Act (Act II of 1899) where it is enacted that the stamp already paid is to be taken into account.

Effect of insufficiency—When an instrument which is required under the Stamp Act to bear a stamp, is not sufficiently stamped, the fact of want of proper stamp does not affect the validity of any contract therein contained, but renders the document inadmissible in evidence, *Joyman Bewa v. Easin Sardar*, 53 Cal. 515: 30 C.W.N. 609: 43 C.L.J. 493: 95 I.C. 483: 1926 A.I.R. 877 (Calcutta).

Alteration of instrument—As to what is material alteration see s. 87 of the Negotiable Instruments Act, 1881. See other cases under s. 14 and s. 15 of this Act.

Any change in the instrument, which causes it to speak in a different language in legal effect from that which it originally spoke, which changes the legal identity or character of the instrument either in its terms or the relation of parties to it, is a material change or technically, an alteration, and such a change will invalidate the instrument against all parties not consenting to the change, *Gour Chandra Das v. Prasanna Kumar Chandra*, 33 Cal. 812 (816, 817): 3 C.L.J. 363: 10 C.W.N. 788. See also *Gogan Chandra Ghose v. Dhuronidhar Mondul*, 7 Cal. 616. Thus an alteration in a document which has the effect of enabling the payer to sue on the document in a court when he could not have sued on it in its original form is a material alteration. Therefore deleting the words "or order" from a promissory note has been held to be a material alteration, *Lahsk-mammal v. Narasinha Raghava Aiyangar*, 38 Mad. 746 (751). When a written acknowledgment by the debtor of his liability to pay to save the bar of limitation, has been materially altered, the instrument not being the foundation of the suit, is not void, *Atmaram v. Umedram*, 25 Bon. 616: 3 Bom. L.R. 913, *Tapiram v. Jugal Keshore*, 21 N.L.R. 169. The rule is stated at page 305 of *Byles on Bills* (17th edition) as follows:

But even if the consent of all parties has been obtained to an alteration in a material part such alteration avoids the bill under the stamp laws; for it has become a new and a different instrument, and, therefore, requires a new stamp..... There are, however, two cases in which an alteration though in a material part, will not vacate the instrument; first, when such an alteration is made before the bill is issued, and secondly, where the bill is altered to correct a mistake or supply an omission and in furtherance of the original intention of the parties. *Tribeni v. Sahu*, 11 Bur. L.T. 257: 50 I.C. 517.

Where a mortgage bond was altered without the consent of the mortgagor by insertion of a provision as to compound interest, but the defendants admitted their liability under the bond, it was held that the mortgage bond has been altered in a material particular and the plaintiff cannot recover on the bond as it has been altered without the defendant's consent in a material respect, and that the admission of the bond might be referred to as evidence of a general debt and the plaintiff could recover on the original consideration and the plaintiff was allowed the principal amount, *Parbati Charan Mookherjee v. Amarendra Nath Bhattacharjee*, 53 Cal. 418. See also *Harichand Maucharam v. Gobind Luxman Gokhale*, 28 C.W.N. 73.

But where the obligation existed before the execution of the altered instrument and it is open to the obligee to sue on the original obligation and he does so, the document may be adduced in proof of the nature and extent of the obligation. So in a suit on an account stated, an altered promissory note, given as security for the amount is admissible to prove the settlement and the amount due, although it could not have been made the foundation of the action, *Christa-charlu v. Karibasayya*, 9 Mad. 399. See also other cases under s. 14, *infra*.

Alteration of terms by a second instrument—Where a complete lease has been executed, stamped and registered, but another instrument was subsequently executed with a view to alter the first and substitute new terms so far as the numbers concerned, the second document is to be stamped under the Stamp Act with a stamp provided for a lease as the 2nd instrument is not a paper which is to be taken in connection with another paper that had already been stamped, in order to supply what is deficient in that paper i.e. such that the two must be taken together in order to arrive at the agreement of lease which was originally come to, *Byjnath Dutt Jha v. Musst. Putsahee Dohain*, 20 W.R. 36. See also *Reference*, 37 All. 264. But an alteration made in good faith to carry out the original intention of the parties does not vitiate the instrument itself, *Ananda Mohan Shaha v. Ananda Chandra Naha*, 44 Cal. 154 (161): 25 C.L.J. 155; 35 I.C. 182.

Refund.—When an insufficiency of duty has been found the penalty to be paid, the procedure to levy it and to obtain a refund are governed by the Act in force at the time the question arose, and this rule will apply even if the document be wholly unstamped. *Reference under Stamp Act* s. 46, 5 Mad. 394 (396).

Evasion of Stamp Laws.—So long as the letter of the law is adhered to, the court cannot object to any apparent evasion of

the stamp and registration rules, *In re Reference by Small Cause Court, Amritsar*, 5 P.R. 1886 Civ. Ref. A defect, if any, in the Stamp Act cannot be cured by construing a document to be other than what it is or purports to be, *Sakharam v. Ram Chandra*, 27 Bom. 279 (280). Where a bond was executed in favour of the plaintiff, and it was stated that as the borrower was in urgent need of money and unable to procure stamp at the moment, therefore the bond was executed on plain paper; but if the plaintiff is compelled to sue on the bond, the borrower will pay the cost of stamp duty together with interest. It was held that this is no evasion of stamp law. *Sashi Bhushan Banerjee v. Tarachand Kar*, 3 B.L.R.A.C. 239. See also *Brojendra Nath Bakshi v. Emperor*, 45 Ind. Cas. 275.

In *In re Commissioners of Inland Revenue v Angus & Co.*, (1889) Q.B.D. 579 it was held: "But it is said that if the appeal be decided against the Commissioners, purchasers will rest satisfied with an agreement of which specific performance will be decreed and will not go on to execute a conveyance, so the Crown will lose the stamp duty and it is rather suggested that this would be cheating Crown and committing a fraud. The Crown must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing which they are perfectly entitled to so. The Crown cannot have the stamp duty unless the parties to the sale chose to effectuate the transaction by an instrument which of itself conveys the property and if they chose to be satisfied with something less the matter is not brought within s. 70" (of the English Act).

Effect of evasion of stamp laws.—Where evasion of stamp duty is intentional, a court of law cannot accept duty and penalty. If such a court receives duty and penalty and makes an endorsement, it should cancel such endorsement on the real facts being brought to its notice, *Prussunno Nath v. Tripura Sundari*, 24 W.R. 88.

Valuation.—As stamp duty is assessed on valuation, the subject has been dealt with by ss. 20 to 28 of the Stamp Act of 1899. Generally the valuation is to be on the value on the date of the instrument and not on a subsequent rise in price, *Bhairab Chandra Chowdhury v. Alek Jan*, 13 Cal. 268. The stamp duty is to be assessed on the valuation given in the deed; the collector has no power to revise the valuation set forth in the deed, *In the matter of Muhammad Muzaffar Ali*, 44 All. 339. An omission to set forth the valuation is an offence under s. 64 (a) of the Indian Stamp Act of 1899, *Emperor v. Rameshar Das*, 32 All. 171. When the value of the subject-matter is indeterminable then the provisions of s. 26 would apply. This would include cases where the valuation depends on a future determination by Collector of a district, *In the matter of Gajraj Singh*, 9 All. 585. In mining leases an approximate valuation is to be given, (5 P.L.J. 660).

Definitions.

2. In this Act, unless there is something repugnant in the subject

or context,—

"Banker."

(1) "banker" includes a bank and any person acting as a banker :

NOTES.

"Includes."—The word "includes" is intended to be enumerative and not exhaustive, *Empress v. Ramanjiyya*, 2 Mad. 5 (7). The word "includes" has an extending force, and does not limit the meaning of the term to the substance of the definition, *In the matter of the petition of Nasibun*, 8 Cal. 534 (536); *Balvantrao v. Purshotam*, 9 Bom. H.C.R. 99 (106).

Bank.—The word Bank is not defined anywhere but it means any company or corporation carrying on the business of Banker, i.e., who receive money in trust to be drawn again whenever the owner of the money desires it, but who may in the meantime let it out to interest or otherwise deal with it.

A Government Treasury in which a District Board deposits money under s. 54 of the Act and issues orders for payment out which are respected by the former, is not a Bank, *Rangaswami Pillai v. Sankarlingam Ayyar*, 43 Mad. 816 : 1920 M. W. N. 428 : 39M.L.J. 377 : 12 L.W. 369 : 58 I. C. 893.

Banker.—See s. 3 of the Negotiable Instruments Act (Act XXVI of 1881) where it is interpreted to "include also persons or a corporation or company acting as bankers." See also Bills of Exchange Act, 1882 (45 and 46 vict. C. 61) s. 2. A "banker" is a person who receives money in trust to be drawn again as the owner has occasion for it.—*Tomlins*.

The relation between a banker and a customer who pays money into his bank is the ordinary relation of a debtor and creditor with the super-added obligation arising out of the custom of a banker to honour customer's drafts, and that relation of banker and customer does not partake of a fiduciary character, *Foley v. Hill* (1848) 2 H.L.C. 28. See also *In re Agra Bank* (1866) 36 L.J. Ch. 151; *Issuf Chunder v. Jiban Kumari*, 16 Cal. 25 (29); *Official Assignee of Madras v. Smith*, 32 Mad. 68 : 1 I.C. 712.

Who are not Bankers.—Where the plaintiff undertakes to lend money required, that undertaking does not make the plaintiff a "banker" for the defendant, *Ratulal Rangildas v. Vrijbhukhan Parabhuram*, 17 Bom. 684. See also *In re Stamp Act*, 38 P.L.R. 1912. See also *The New Spinning and Weaving Company v. Kessowji Naik*, 9 Bom. 373. Where a person gives money to an Indian Banking house the question whether it is a Bank within the meaning of this Act is to be determined on facts in each individual case i.e., whether it is a loan or a deposit. *Accountant General v. Kristo Kamini Dasi*, 31 Cal. 519; *Dharam Das v. Ganga Devi*, 29 All. 773; *Dorabji v. Muncherji*, 19 Bom. 352; *Perundevitayer v. Nammalvar*, 18 Mad. 390; *Bradley v. Agra Bank*, 101 P.R. 1885.

Person.—Person shall include any company or association or body of individuals either incorporated or not.—*The General Clauses Act* (Act X of 1897), s. 3 (39).

(2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money.

NOTES

See s. 3 (2) of Act I of 1879 ; s. 3 (3) of Act XVIII of 1869 ; s. 56 of Act 10 of 1862 ; s. 41 of Act 36 of 1860. See s. 32 of the Stamp Act, 1891 (54 and 55 vict. c. 39).

The definition as given in the Stamp Act adopts the definition given in the Negotiable Instruments Act s. 5 and also includes "hundis" or other documents, entitling or purporting to entitle (1) a certain person named therein or not (2) to payment of money (3) by any other person who must be certain (4) or to draw upon any person for any sum of money, which must be certain, and (5) the order must be unconditional. The definition in the Negotiable Instruments Act in s. 5 is : "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument." "A promise or order to pay is not 'conditional' within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen though the time of its happening may be uncertain." "The sum payable may be 'certain' within the meaning of this section and section 4, although it includes future interest or is payable at any indicated rate of exchange, or is according to the course of exchange and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due." "The person to whom it is clear that the direction is given or that payment is to be made may be a 'certain person' within the meaning of this section and section 4 although he is mis-named or designated by description only."

For the purposes of the Stamp Act, a document is a bill of exchange although it be not so within the definition in the Negotiable Instruments Act, if it be a document entitling or purporting to entitle any person whether named therein or not, to payment by any other person of any sum of money. A demand draft drawn by the Imperial Bank of India, Calcutta upon Imperial Bank of India, Lahore and payable to a 3rd party (the Commercial Syndicate Ltd.) or order, is a bill of exchange under s. 2 of sub-section (2) of the Indian Stamp Act, 1899. *Re Imperial Bank of India, Calcutta*, 56 Cal. 233 : 32 C.W.N. 1015 : 1928 A.I.R. 566 (Cal.).

Means.—When it is intended to exhaust the signification of the word interpreted, the word “means” is used. See *Empress v. Ramanjiyya*, 2 Mad. 5 (7). See also *Balvantrao v. Purshotam*, 9 Bom. H.C.A.C. 99 (105).

Person certain.—The person must also be certain according to s. 5 of the Negotiable Instruments Act. Where there was absence of certainty with regard to the person to whose order the money was payable, the instrument was held not to be a promissory note. *In re Yea Eng Pwa v. Chetty firm of R. M. A. R. R. M.* 5 L.B.R. 162 : 4 Ind. Cas. 293. An order by a firm of Chetties directing another firm to pay a specified sum of money to a person named or bearer is a Bill of Exchange and is chargeable with duty under Art. 13 of the first Schedule : *In re M. A. Raeburn and Co.*, 11 Bur. L.T. 87 : 47 Ind. Cas. 581.

Drawer and Drawee.—The maker of the bill of exchange is called the “drawer,” the person thereby directed to pay is called the drawee.” *The Negotiable Instruments Act* (Act XXVI of 1881) s. 7.

Where drawer and drawee is one—In England the Bill of Exchange Act 1882 (45 and 46 Vic. c. 61) enacts that where the drawer and drawee is the same person, then the holder may treat the instrument either as a bill of exchange or a promissory note.” In India “on principle the law must be the same, i.e., the holder has the right to treat the document either as a bill of exchange or as a promissory note.” *Jalan Chand v. Assaram*, 22 C.L.J. 22 (26) : 33 I.C. 247.

The drawer and drawee of a bill of a exchange need not be different persons. Where the drawer and drawee is the same prson that person cannot treat the instrument as a bill of exchange although it is well established that the holder of the bill may treat it as a bill of exchange, *Bibi Kazmi v Lachhman Lal Sao*, 9 Patna, 717 : 127 I.C. 575 : 1930 A.I.R. (Patna) 239.

Pay.—The order must be to pay a certain sum of money See *Bibi Kazmi v. Lachhman Lal Sao*, 9 Patna 717 : 127 I.C. 575 : 1930 A.I.R. (Patna) 239 ; *Sheo Das v. Kankaiya Lal*, 61 P.R. 1888. The order to pay should not be payable out of a certain fund as such a condition is dependent upon the existence of the fund, (*vide* the definition); see also *Fisher v. Calvert*, 27 W.R. 301.

Amount certain.—The amount payable must be certain according to s. 5 of the Negotiable Instruments Act.

The sum payable may be certain although

- (a) it includes future interest ;
- (b) it depends on a rate of exchange ;
- (c) the instrument may provide for payment by instalments with or without a provision that in default of payment of an instalment, the balance unpaid shall become due.

See also Bills of Exchange Act, 1882 (45 and 46 Vict. c. 61) s. 9 and *Jones v. Simpson*, 2 B. & C. 318. The amount to be paid must

be money only. [vide the definition quoted above and Bills of Exchange Act, 1882 (45 and 46 Vict. c. 61). s. 3 (1) and (2)].

Order.—The “order” must be an unconditional order. An instrument in the nature of an unconditional order by a certain person to a certain person to pay a certain sum of money to another was held to be a “bill of exchange” notwithstanding the fact that the instrument contained a clause for repayment, *Sheo Das v. Kanhaiya Lal*, 61 P.R. 1888; see also *Nasibun v. Preosunker*, 8 Cal. 534; *Charumappa v. Ayyarma*, 16 Mad. 283; *Muthu Sasirigal v. Viswanatha Pandara Sannadhi*, 26 M.L.J. 19 : 1914 M.W.N. 58.

Explanation (1) to s. 23 of the Negotiable Instruments Act (as amended by Act VIII of 1919) provides that a promissory note, bill of exchange or cheque is payable to order when it is expressed to be so payable or expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be so transferable, *Bibi Kazmi v. Lachhman Lal Sao*, 9 Patna 717 (720) : 127 I.C. 575 : 1930 A.I.R. 239 (Patna). See also *Khetra Nath Saha v. Jamini Kanta Dewan*, 54 Cal. 445 : 100 I.C. 630 : 1927 A.I.R. (Cal.) 427. See Bills of Exchange Act, 1882 (44 & 46 Vict. c. 4) s. 3 (1) & (2) 427. An order to pay cannot be said to be conditional, if it be made dependant upon the happening of an event, which must happen. [Vide definition quoted above and Bills of Exchange Act, 1882 (45 and 46 Vict. c. 61) s. 3 (3)].

Hundi.—A Bill of Exchange may include a “hundi” but a “hundi” does not include a Bill of Exchange, *Biswanath Bhattacharya v. Govinda Chandra Das & others*, 23 C.W.N. 534 : 29 C.L.J. 305 (313) : 51 Ind. Cas. 88. The distinction between a “hundi” and a “Bill of exchange” has been pointed out in *Davlatram v. Bulakhindas*, 6 Bom. H.C. Rep. 24 (O.C.).

Shah Jogi Hundi.—A Shah Jogi Hundi is payable to a respectable holder and the acceptor does not get a discharge unless he has taken the trouble to satisfy himself that the person presenting the document for payment is either known in the bazar or is indentified to him. It is either a hundi payable to bearer or a Bill of Exchange or a cheque payable to order. The holder of such a hundi, when attested by witness can treat it as an attested Promissory note. The document, therefore, would come under s. 6 of the Stamp Act and is chargeable with the higher of two duties mentioned in the Schedule. If such a hundi is drawn for more than a year then the duty payable is the same as that on a bond. Such a hundi can be sued upon either as a promissory note or as a bond containing an obligation to pay. If not properly stamped it can be admitted in evidence on payment of penalties under s. 35 of the stamp Act, *Jalan Chand v. Assaram and others*, 22 C.L.J. 22 : 33 I.C. 247.

Shah Jogi Hundi is not a Bill of Exchange; it is a bond as defined in the Stamp Act and is admissible in evidence under s. 35 (a) of the Stamp Act on fulfilment of the conditions stated therein, *Keshari Chand Surana v. Asharam Mahato*, 22 C.L.J. 209 : 19 C.W.N. 1326 : 33 I.C. 250. See also *Venku v. Sitaram*, 29 Bom. 82; 6 Bom. L.R. 841. For incidents of Shahjogi hundies see *Thakurdas*

v. *Futteh Mull*, 7 B. L. R. 725; *Bhupatram v. Hari Prio Coach*, 5 C. W. N. 313; *Lalla Mal v. Kesho Das*, 26 All. 493: (1904) 24 All. W. N. 100: 1 All. L. J. 254; *Ganeshdas Ramnarayan v. Lachminarayan*, 18 Bom. 570; *Banshidhar v. Jwala Prasad*, 16 Bom. L. R. 434: 25 I. C. 52; *Davlatram Shriram v. Bulakidas Khemchand*, 6 B.H.C.R. (O.C.J.) 24.

To whom payable.—A *Shahjogi hundi* is payable to the respectable holder and is not equivalent to a hundi payable to bearer, *Bhupatram v. Hari Prio Coach*, 5 C.W.N. 313; *Thakurdas v. Futteh Mull*, 7 B.L.R. 275; *Lalla Mal v. Kesho Das*, 26 All. 493. But in *Balmukund Lal v. The Collector of Jaunpore*, 4 (1885) All. W.N. 3, it was held that the words “a respectable person” convey the same meaning as a “bearer.”

Jokhami Hundi.—As to incidents of Jokhami Hundi, see *Jadowji Gopal v. Shamji and another*, 4 Bom. 333 (340).

What is not a Bill of Exchange.—The word “order” means an instrument in the nature of a mercantile instrument similar to a draft or cheque, hence an order by a master to a servant to pay money to another is not an order for payment of money within Schedule A of Act X of 1862, *Shreeput Bulwant Rao v. Futtehooddeen*, 1 N.W.P. 143. An order by a creditor to a debtor to pay the money due to a third person to whom a sum is payable by such ‘creditors, is not a bill of exchange, *In re Nandu Bai and others v. Gau*, 27 Bom. 150: 4 Bom. L. R. 951. So also orders by a landlord on tenants to hold themselves responsible to a particular person to whom a release has been made by the landlord is not a document which is required to be stamped, *Bukshee Kunnee Lall v. Maharam Sha Koornath Sai*, 25 W. R. 80.

Bought and sold notes.—When a contract is made through a broker he reduces the contract to writing. This may be in triplicate; the copy he delivers to seller is sold note; the copy he delivers to buyer is bought note.

Bought and sold notes with Arbitration Clause—An agreement for sale of goods and a cause for reference to arbitration does not require a stamp as the agreement for sale does not require a stamp and other clauses are subsidiary incidents, *Kyd v. Mahomed*, 15 Mad. 150. A contract for sale of goods comprised in bought and sold notes which contains a provision to refer disputes to arbitration is to be chargeable with stamp under Art. 43 of the Stamp Act, *The Bombay Company Ltd. v. The National Jute Mills Co., Ltd.*, 39 Cal. 669: 16 I. C. 153. See also *Bajjnath v. Ahmed Musaji Saleji*, 40 Cal. 9: 17 C.W.N. 395 9 I.C. 978.

“Bill of exchange payable on demand.”

(3) “bill of exchange payable on demand” includes—

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory

note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;

- (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods ; and
- (c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn :

NOTES.

Payable on demand.—A promissory note or bill of exchange in which no time is specified is payable on demand, *Negotiable Instruments Act s. 19*—See also s. 21 of the same Act.

Promissory note payable on demand—A promissory note payable on demand, remains a promissory note payable on demand although there may be a collateral agreement between the parties that the holder will not present it for some time and if presented at once the maker will be entitled to make a certain deduction, *Chandrokanta Mookherji v. Kartic Chandra Chaile*, 14 W. R. O. A. J. 38 : 5 B.L.R. 193 ; *Jalan Chand v. Assaram*, 22 C.L.J. 22 (Shahjogi hundi), but see *Eastern Financial Association v. Pestonji Curseljee Shroff*, 3 Bom. H.C.R. 9.

A demand bill drawn by the Secretary and Treasurer and Accountant of the Imperial Bank, Calcutta and addressed to the Imperial Bank, Lahore and made payable to a third party, (the Commercial Syndicate Ltd.) or order, is a bill of exchange payable on demand and is exempt from stamp duty by virtue of the Finance Act (Act V. of 1927), *In the matter of Stamp Act*, 1928 A.I.R. (Cal.) 566 S.B. : 56 Cal. 233 : 32. W. N. 1015.

(4) “bill of lading” includes a “through bill of lading,” but does not include a mate’s receipt :

NOTES.

Bill of lading—A bill of lading is a memorandum signed by the master of a ship or captain of a ship, acknowledging the receipt

of goods, to be delivered by them at a certain place, subject to certain casualties, for which they are not to be answerable, those being provided for by insurance. The bill of lading is signed in three parts, one part being kept by the consignor, another being sent to consignee, and third is kept by the captain.

As the bill of lading confers right of possession, if lawfully obtained, the captain is justified in delivering the goods to the person who presents it to him, as the bill is transferable by endorsement, unless it is presented under suspicious circumstances. *Tomlins.*

By Inland Companies.—Bills of lading by Inland River Steam Navigation Company for goods consigned with them at one place for being delivered at another are Bills of lading, and as such are liable to stamp duty, and the fact that they relate to inland navigation does not alter the nature of the document, *Reference under the Stamp Act of 1890*, 30 Cal. 365.

Bills of lading—whether contracts—In *Hassanbhoy v. The British India Steam Navigation Co., Ltd.*, 13 Bom. 571 (585) a bill of lading was considered to be a contract of carriage between the parties.

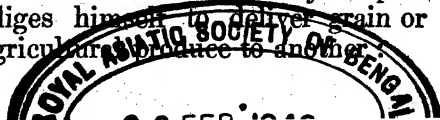
There is another inaccuracy in the statute, which indeed is universal. It speaks of the contract contained in the bill of lading. There is no contract in it. It is a receipt for the goods, stating the terms on which they were delivered to and received by the ship, and therefore excellent evidence of those terms, but it is not a contract. That has been made before the bill of lading was given, *Sewell v. Burdick*, (1884) 10 App. Cases, 74 (105).

Mate's receipt—A mate's receipt is a receipt granted to the person who delivers goods on board a ship, by master or other person in charge of the ship.

"Bond."

(5) "bond" includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.



NOTES.

See s. 3 (4) of Act 1 of 1879 ; s. 3 (5) of Act XVIII of 1869.

Includes.—See notes under s. 2 (1) *supra*.

The essentials are :—

- (i) It may be a conditional instrument whereby a person obliges himself to pay money to another.
- (ii) An instrument creating an obligation and attested by a witness who is not the scribe, and
- (iii) The instrument must not be payable to bearer or order,
- (iv) The instrument may be for delivery of grain and other agricultural produce.

The clauses (b) and (c) are to be read together.

Bond—the definition is not exhaustive.—The definition of the word “bond” as given in the Stamp Act of 1879 is not exhaustive, *In the matter of the petition of Nasibun*, 8 Cal. 534 (536).

Neither in the Stamp Act nor in the Limitation Act is there an exhaustive and complete definition of the term “bond”. In English law the term is given a wide sense indeed so that it includes what under the Indian system would be called an agreement. The English definition of a bond can furnish no guidance in the decision of this point. . . . The definition of the term “bond” even in the present Stamp Act is not exhaustive, and the term in the course of years has been extended so as to include instruments which might not have fallen under the earlier definitions, *Wadhawa Mal v. Karim Bakhsh*, 6 Lahore 276 : 26 P.L.R. 141 : 86 I.C. 844 : 1925 A.I.R. (Lah.) 415. See also *Nand Lal v. The Joint Hindu Family of Karmchand Shamir Lal*, 2 Lah. L.J. 224.

What is a bond.—A document to be a bond (i) must create an obligation to pay, (ii) must be attested by witness who is not a scribe, (iii) must not be payable to bearer or order, and (iv) the article to be delivered may be grain, or other agricultural produce or money, but must not be of liquidated damages.

The definition of a bond in s. 5 of the Stamp Act, 1879 is the same as understood by the word “bond” in England, and *it is an obligation* of a different character, covenant to do a particular act, the breach of which must not be compensated in damages, *Gisborne & Co. v. Subal Bowrie*, 8 Cal. 284 (286) : 10 C.L.R. 219. No document can be a bond within the definition of a “bond” in the Stamp Act, unless it is one which creates an obligation to pay money. *Hira Lal Sircar v. Queen Empress*, 22 Cal. 757 (759) ; *Robert v. Shircore*, 7 B.L.R. 510. Under the Stamp Act, a promissory note unless it is payable to order or bearer, is to be deemed a bond, if attested. *R. D. Sethna v. Mirza Mahomed Shirazi*, 9 Bom. L.R. 1034. A document executed by the defendant for money received and not payable to bearer or order and attested by two witnesses, is a bond

and not promissory note and is to be stamped as a bond, *Venku v. Sitaram*, 29 Bom. 82 : 6 Bom. L.R. 841. • See also *Jalan Chand v. Assaram*, 22 C.L.J. 22 : 33 I.C. 247.

A document addressed to a particular person and containing an unconditional undertaking signed by the maker to pay on demand to the person in whose favour it is executed, a certain sum of money, principal together with interest, and attested by a number of witnesses and is not payable to order or bearer, is a bond within the meaning of s. 2 (5) of the Stamp Act and should be stamped as such, *Khetra Mohan Saha v. Jamini Kanta Dewan*, 54 Cal. 445 : 100 I.C. 630 : 1927 A.I.R. 427 (Cal.).

A *cadjan* not containing any prohibition restricting the promisee from alienating it, nor expressly providing that the amount is payable to the person in whose favour it is executed or his order and is attested, is a bond. *Veerappudayan v. Oganthapudayan*, 118 I.C. 492 : 1929 A.I.R. 599 (Mad.).

Sale of cotton.—An ordinary agreement between two merchants for sale of cotton when attested by two witnesses becomes a bond within the definition of the term in the Stamp Act. *In re Ralli Brothers*, 8 Bom. L.R. 234. But see *Daryaji v. Mahalap Khan*, 1886 P.J. 83.

Conditional Instrument.—Where a defendant executed an undertaking to pay on demand the amount found due, on settlement of account on a former bond, with interest and the document was attested by two witnesses, held that the document is a bond and not a promissory note and should be stamped as such. *Balkrishna v. Govind Pand Naik*, 8 Bom. 297. See also *In the matter of petition of Nasibun* 8 Cal. 534 (536) and *Khetra Mohan Saha v. Jamini Kanta Dewan* 54 Cal. 445 : 100 I.C. 630 : 1927 A.I.R. 427 (Cal.) where an unconditional undertaking was given.

Conditional bond—operation suspended.—An instrument in the nature of a bond, remains a bond, although it is agreed that it is not to come into operation till the hundi, in respect of which it was executed, has been dishonoured, *Lakshmandas v. Rambhau*, 20 Bom. 791.

The instrument must create an obligation to pay.—No document can be a bond, unless it creates an obligation to pay money. *Hiralal Sircar v. Queen Empress*, 22 Cal. 757 and other cases *supra*. An indemnity note in favour of a railway company whereby the executants do not oblige themselves to pay money to the railway company is not a bond, *Reference under Stamp Act*, 5 Bom. 478 F. B. The instrument creating an obligation may contain an agreement to pay from year to year. *Bai Lakhi v. Amaldas*, 1887 P. J. 143 ; *Khetra Mohan Shaha v. Jamini Kanta Dewan*, 54 Cal. 445 : 100 I.C. 630 : 1927 A.I.R. (Calcutta) 427. An instrument whereby a person obliges himself to pay money to another and is not payable to bearer or order and is attested by witnesses, is a bond and not a promissory note. *Roxario v. Harballabh Onkerjee*, 10 N.L.J. 43 : 100 I.C. 794 : 1927 A.I.R. (Nag.) 195. An instrument creating an obligation to honour all hundis, is a bond,

Lakshman Das Raghunath Das v. Rambhau Mansaram, 20 Bom. 791. An agreement to lend money does not create an obligation to pay money therefore such an agreement is not a bond, *Hitwardhak Cotton Mills Co. Ltd. v. Sorabji Dinshaw Karaka*, 33 Bom. 426 : 11 Bom. L.R. 286 : 2 I.C. 432. See also *Mahomed Sadiq vs. Amar Nath Dutt* 2 P.L.J. 686 : 2 P.L.W. 225 : 1917 Pat. C.W.N. 345 : 41 I.C. 693 which was a case of a mere obligation without attestation and it held not to be a bond.

Obligation must be express.—The obligation to pay money must be express, and not merely to be implied from the words used, *Sakal Chand v. Gulabchand Matichand*, 1882 P.J. 29; *Ranchordas v. Bhimabai*, 1888 P.J. 128.

Obligation under a Bond and Obligation under a Contract, Difference.—The distinction between a “bond” and an obligation under an ordinary contract is that a breach of an obligation under a bond does not “sound in damages” whereas “damage” is what one who breaks an ordinary contract is subjected to, *The Collector of Rangoon v. Maung Aung Ba*, 9 Bur. L.T. 111 : 8 L.B.R. 382 : 33 I.C. 920. Therefore agreements with penal clauses, are not bonds even if attested, *Gishorne & Co. v. Subal Bowrie*, 8 Cal. 284 : 10 C.L.R. 219; *Reference by Board of Revenue*, 2 All. 654—Per. Stuart C.J.; *Robert and Charrial v. C. P. M. Shircore*, 7 B.L.R.O.C. 510.

The instrument must be attested by witness.—An instrument by which the executant promises to pay a certain sum on demand and is signed by the writer, is a promissory note; signature by the writer is not attestation and the scribe is not an attesting witness. The words “attested by a witness” refer to attestation on the face of the instrument, *Bidhuranjan Majumdar v. Mangan Sarkar*, 49 Cal. 729 : 35 C.L.J. 459 : 26 C.W.N. 585 : 1922 A.I.R. 452 (Cal.). See also *Reference under Stamp Act*, s. 46, 8 Mad. 87 F.B.; *Hari Singh v. Fazal*, 56 I.C. 117. A document which contains a promise to pay on demand a certain sum of money with interest and which bears the signature of the writer and some others as witnesses, is a bond and should be stamped as such *Reference under the Stamp Act*, s. 46, 13 Mad. 147 F.B.; *Reference under the Stamp Act*, s. 46, 10 Mad. 158.

Statement by a scribe.—Such attestation is not made by a statement by a scribe of the document that the document was correct and was written by his pen. *Reference under Act 1 of 1879* s. 46, 17 All. 211 : (1895) 15 All. W.N. 204 F.B.; *Gurditta Mal v. Dhanma Singh*, 14 P.R. 1902 : 3 P.L.R. 1902; See *Contra Reference under Stamp Act* s. 46, 10 Mad. 158 F.B.; See also *Dulagh Vanmali v. Behman Jamal*, 14 Bom. 511; *Paban Khan v. Badal Sardar*, 34 C.L.J. 498.

A promissory note is a bond when attested.—A promissory note not payable to bearer or order when attested by witnesses is a bond. *Venku v. Sitaram*, 29 Bom. 82 : 6 Bom. L.R. 841; *Reference under Stamp Act*, s. 49, 13 Mad. 147. An instrument not payable to bearer or order and attested by two witnesses, is a bond within the definition as given in the Stamp Act, and should be stamped as

such. *Reference under Stamp Act* s. 46, 8 Mad. 87 F.B. See also *D. Roxario v. Harballabh Onkarjee*, 100 I.C. 794 : 1927 A.I.R. 195 (Nag.). S. 2 (5) (b) provides that an instrument to be a bond must be attested by witness. *Dayal v. Bhimma*, 80 I.C. 860. Even an entry in an account book of the creditor of a debt and signed by the debtor and attested by witnesses is held to be a bond and not an acknowledgment, *Daula v. Gonda*, 35 P.R. 1903 : 101 P.L.R. 1903.

A promissory note if attested by a witness is a bond, *Barisal Rindan Sumity v. Sital Chundra Mukhopadhyaya*, 34 C.W.N. 911 ; 129 I.C. 407 : 1930 A.I.R. 630 (Cal.). An instrument intended to be a hundi and not payable to bearer or order is a bond when attested by a witness, *Mahinder Singh v. Firm Nagina Mal Bhana Ram*, 135 I.C. 191 : 1932 A.I.R. 22 (Lah.).

The instrument must not be payable to bearer or order—

An instrument evidencing an unconditional agreement to pay a certain sum and not expressed to be payable to bearer and when the name of the payee does not appear on the face, is to be considered to be a bond and not a promissory note, *Lala v. Bhaga*, 3 Bom. L.R. 699. See also *Reference under Stamp Act*, 8 Mad. 87 ; *Jalan Chand v. Assaram*, 22 C.L.J. 22 (Shahjogi hundi). An agreement by a debenture company with a contractor to pay £2,20,000 for the construction of a Railway on certain terms with a stipulation that the company will retain £40,000 as compensation against risks in future etc. is a bond and should bear a stamp calculated on £2,20,000. *Reference under Stamp Act*, 15 Mad. 193 F.B.

Effect of amendment of the Negotiable Instruments Act.—"The definition of 'promissory note' as given in s. 2 (22) of the Stamp Act adopts the definition as given in s. 4 of the Negotiable Instruments Act of 1881, and includes some instruments not covered by that definition. "Explanation (1) which, amongst other amendments was introduced by Act VIII of 1919 to section 13 of the Negotiable Instruments Act of 1881, was meant to enlarge the definition of a Negotiable Instrument. By this amendment a promissory note not payable to order, which was previously not negotiable, was brought within the class of Negotiable Instruments; and the amendment cannot be read into the definition of a bond as contained an section 2 (5) (b) of the Stamp Act so as to make an instrument which on the face of it is not payable to order, one payable to order by virtue of the said explanation and thus to take it out of the said definition." *Khetra Mohan Saha v. Jamini Kanta Dewan*, 54 Cal. 445 (448, 449) : 100 I.C. 630 : 1927 A.I.R. 472 (Calcutta). See also *Bibi Kazmi v. Lachhman Lal Sao*, 9 Patna 717 : 127 I.C. 575 : 1930 A.I.R. 239 (Patna) ; *Venku v. Silaram*, 29 Bom. 82 : 6 Bom. L.R. 841.

Article to be delivered may be grain, etc.—An agreement by which an undertaking is given to deliver grain on demand, is not a promissory note as it does not come within the definition of a promissory note in s. 2 (22) of the Stamp Act which requires payment of a definite sum of money. *Thakurain Abhairaj Kuar v. Dala Din*, 73 Ind. Cas. 465 : 1924 A.I.R. 106 (Oudh). Where one person borrows a certain quantity of grain

and agrees to repay a larger quantity by an attested instrument, the instrument is a bond and should be stamped as such, *Magandas Khem Chand v. Ram Chand Hiraji*, 7 Bom. 137; *Rup Chand v. Barkawalad Suka*, 1884 P.J. 257. The fact that money and grain is to be paid makes no difference, *Mulla Chetti v. Muttan Chetti*, 4 Mad. 296 F.B.; See also *Chinnaji v. Ranu*, 4 Bom. 19. An instrument embodying a stipulation to repay with interest in kind an advance of a quantity of grain, is a bond as defined in s. 2 (5) of the Stamp Act. *Wadhawa Mal v. Karim Buz*, 6 Lahore 276; 86 I.C. 844 : 1925 A.I.R. 415 (Lah.): 26 P.L.R. 141.

Advance for produce to be delivered.—An instrument, on which money was advanced and in return the executant agreed to deliver a quantity of sugar by a certain date and in case of failure to pay a certain sum as damages hypothecating the whole produce of sugarcane on the field, is a bond, *In the matter of Gajraj Singh*, 9 All. 585 F.B.; *Kashinath v. Villen*, 1882 P.J. 408. But timber has been held to be not an agricultural produce. *Reference under Stamp Act*, s. 46; 8 Mad. 15 (17).

Bond or acknowledgment.—An agreement to lend money does not create an obligation to pay money within the meaning of s. 2 (5) (b) of the Stamp Act, 1899 and is not chargeable as a bond. *The Hivardhak Cotton Mills Co., Ltd. v. Sorabji Dinshaw Karaka*, 33 Bom. 426 : 11 Bom. L.R. 386 : 2 Ind. Cas. 432. See also under Acknowledgment.

Bond and promissory note.—Where the agreement to pay money does not depend upon any condition, and the promise to pay is absolute and the instrument is not attested, it is a promissory note, *In the matter of petition of Nasiban*, 8 Cal. 534 (536).

What is not a bond; Agreements with penal clauses.—An agreement to deliver agricultural produce for consideration and to compensate the covenantee in default does not fall within the definition of "bond" as given in s. 2 (5) so as to be chargeable with *advalorem* duty under Art. 15 of Schedule I, even if it is attested by two witnesses. Such an instrument is an agreement under Art. 5 (1) (c) of the Stamp Act and comes under exception (a) to that article. *The Collector of Rangoon v. Maung Aung Ba*, 9 Bur. L.T. 111 : 8 L.B.R. 382 : 33 Ind. Cas. 920. An agreement to pay money at the rate of Rs. 15 per bigha in case of failure to deliver indigo is not a bond but an agreement, *John Doyle v. Mundaree Mundal*, 5 W.R.S.C.C. 10. An instrument containing an agreement in which a penal clause is attached in case of failure to perform the covenant, is not a bond as the party can only recover compensation under s. 74 of the Contract Act. *Gisborne & Co. v. Subal Bowri*, 8 Cal. 284 : 10 C.L.R. 219; see also *Robert and Charriol v. Shircore*, 7 B.L.R. 510. (O.C.); *Madras Ry. Co. v. Rust*, 14 Mad. 18; see also *Reference by Board of Revenue*, 2 All. 654.

Other Agreements.—An instrument whereby a person obliges himself to pay money to another, but the amount is not payable to 'order or bearer' and is not attested, is not a bond, *Mahomed Sadiq v.*

Amar Nath Dutt, 2 Pat. L.J. 686 : 2 Pat. L.W. 225 : 1917 C.W.N. Pat. 345 : 41 I.C. 693. An agreement to lend money does not create an obligation to pay money, and such an agreement is not a bond but a mere agreement. *Hitavardhak Cotton Mills v. Sorabji*, 33 Bom. 426 : 11 Bom. L.R. 386 : 2 I. C. 432.

An instrument, not attested, whereby a debtor agrees to pay a certain sum of money to the creditor coupled with a further agreement that the creditor will not sue on the original pro-notes, is not a bond but an agreement, and s. 2 (5) (a) of the Stamp Act does not make the restriction void, *Yeo Eng Pwa v Chetty firm of R. M. A. R. R. M.*, 5 L.B.R. 162 : 4 Ind. Cas. 293, See *Contra Lakshmandas v. Rambhau*, 20 Bom. 791 which was a case to honour all hundis.

Liability for debt of another.—An instrument whereby the defendant appellant took upon himself the liability of another person in respect of a debt of Rs. 1,000 and agreed to get certain land mortgaged to the creditors in lieu of that sum and also that if he fails to do so he would pay the said sum of Rs. 1,000 together with interest, is not a 'bond' within the meaning of s. 2 (5) of the Stamp Act, *Nand Lal v. The Joint Hindu Family of Karmchand Shamir Mnl*, 2 Lah. L.J. 224.

A promise to pay barred debt.—An instrument in writing containing a promise to pay barred debt, is not a bond within the meaning of s. 2 (5) of the Stamp Act and need not be stamped as it is not required by any of the provisions of the Stamp Act to bear a stamp. *David Sutherland Clark v. Mrs. Rose Grimshaw*, 73 Ind. Cas. 652 : 1923 A.I.R. 481 (Lah.).

Sureties.—An instrument of agreement was executed between a certain person called the 'debtor' in the instrument in the 1st part, and three other persons called "sureties" of the 2nd part; and a Chetty firm of R. M. A. R. R. M. called the "creditors" of the 3rd part. It recited that Rs. 36,000 is due from the debtor to the creditor in respect of monies due on six pro-notes and the debtor is ready to pay a portion and has asked the same to be accepted but wants time to pay the remainder in equal instalments, that in consideration of the creditor doing so the 2nd party the sureties have agreed to join; the instalments being payable to persons 'the members for the time being' of the firm; the instrument was stamped as an agreement. It was held that it is not a bond nor a promissory note as there is no certainty as to the person to whom the future instalments were payable as required by s. 4 of the Negotiable Instruments Act. Therefore it is properly stamped as an agreement. *In re Yeo Eng Pwa v. Chetty firm of R. M. A. R. R. M.*, 5 L.B.R. 102 : 4 Ind. Cas. 293 F.B.

Security Bond.—Where a Receiver appointed by court executed a security bond under orders of court and in its favour, binding himself and his heirs to the sum of Rs. 150 and as security pledging immovable property worth Rs. 200 held that the instrument is a bond and must be stamped both under the Court Fees Act and under Art. 40 of Schedule 1 of the Stamp Act. *Amirthammal v. Ramalinga Gounden*, 43 Mad. 363 : 38 M.L.J. 503 : 12 L.W. 537 : 57 I.C. 184. As to security bonds—See under Art. 57 *infra*.

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed :

NOTES.

See s. 3 (5) of Act I of 1879.

"Commencement of this Act."—See ss. 3 (12) and 5 (3) of the *General Clauses Act* (Act X of 1897).

In order that an instrument may be chargeable it must be an instrument described in the schedule to this Act or its counterpart. See s. 3

Chargeable.—The word 'chargeable' means chargeable under the Act in force at the date of execution of the instrument. *Narayanan Chetti v. Karuppalliem*, 3 Mad. 251; followed in *Reference under Stamp Act*, 5 Mad. 394 where it was held that the duty chargeable is the duty under the Act in force at the date of execution of the instrumented, but the penalty is to be recovered under the Act in force at the time of the dispute.

Documents executed outside British India—There is no provision of law which makes it imperative that a promissory note *executed out of British India* is to be stamped under the Act before it is sued on or is used in Court, when the holder does not perform any of the acts referred to in s. 5 and s. 18 of the Act, *Mahomed Rowthen v. Mahomed Husin Rowthen*, 22 Mad. 337 : 9 M.L.J. 135. See also *Kunhe Koya Haji v. Panika Vitil Assam Bava*, 36 M.L.J. 188 : 52 Ind. Cas. 477.

(7) "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand :

NOTES.

See s. 3 (6) of Act I of 1897 and s. 3 (8) of Act XVIII of 1869.

In order that an instrument may be a cheque it must be (i) a bill of exchange, (ii) drawn on a banker, (iii) not payable otherwise than on demand. The word "cheque" is also defined in s. 6 of the *Negotiable Instruments Act*. The definition is nearly the same as that given in this Act.

In *Ram Charn Mullick v. Luchmee Chand Kadhakissen*, 9 Moore's P.C. 46 at pages 69, 70 the Judicial Committee of the Privy Council said: "It is not, however, the case of a Bill of Exchange, but of a Banker's cheque, which is a peculiar sort of instrument, in many respects resembling a Bill of Exchange but in some entirely different; a cheque does not require acceptance; in the ordinary course it is not entitled to 10 days of grace, and though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as that person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a Bill of Exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate payment at that place. There is a very good note on this subject in the case of *Searle v. Western* (2 Mov. and Rob. 404), as to the difference between cheques and Bills of Exchange."

Receipt or a cheque.—An instrument which contains the name of the messenger and purports to acknowledge a sum received by the depositor of a Savings Bank, is a receipt and not liable to stamp duty as a cheque. *In re Stamp Act*, 38 P.L.R. 1912: 184 P.W.R. 1912: 13 I.C. 330.

Where the defendant gave his creditors "chits" for certain sums addressed to the plaintiff in pursuance of an agreement with the plaintiff to lend money for payment of his trade debts, with a request to pay the amount mentioned in those "chits," it was held that these "chits" are not cheques or bills of exchange as the plaintiff is not the defendant's Banker and the "chits" do not require a stamp. *Ratulal Rangildas v. Vrijbhukhan Parabhuram*, 17 Bom. 684.

Post-dated Cheque—Where a post-dated cheque, is dishonoured, it is admissible in evidence in a suit to recover the amount stated in the cheque. The fact that it is post-dated does not make it a Bill of Exchange payable on the date on which it is purported to have been drawn. *Romen Chetty v. Mahomed Ghouse*, 16 Cal. 342. A post-dated broker's cheque is available in the hands of its holder and is admissible in evidence with one anna stamp, *Motilal v. Jagmohan Das*, 6 Bom. L.R. 699; *Mariambai v. Husan Ahmed*, 1 Bom. L.R. 715.

"Chief Controlling Revenue-authority."

(8) "Chief Controlling Revenue-authority" means—

- (a) in the Presidency of Fort St. George [the Presidency of Fort William in Bengal] and the territories under the administration of the Local Government of Bihar and Orissa—the Board of Revenue :

(b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner :

(c) in Sindh—the Commissioner :

(d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner ; and

(e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the Official Gazette, appoint in this behalf :

NOTES.

Amendments.—The words “the Presidency of Fort William in Bengal” were inserted by the Amending Act, 1916 (13 of 1916).

The words “Bihar and Orissa” were substituted for the word “Bengal” by *ibid.*

The designation of the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh was changed to “the Lieutenant-Governor of the United Provinces of Agra and Oudh” in 1902—see Proclamation No. 996 P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces (Designation) Act, 1902 (7 of 1902), General Acts, Vol. V. The United Provinces and Bihar and Orissa have now a Governor each—see the Government of India Act, s. 46.

The words “under the administration of the Local Government of Bihar and Orissa” were substituted for the words “respectively under the administration of the Lieutenant Governors of Bihar and Orissa and the North Western Provinces and the Chief Commissioner of Oudh” by the Repealing and Amending Act, 1930 (Act VIII of 1930).

In the North-West Frontier Province, for “Punjab” read “North-West Frontier Province”; for “Financial Commissioner” read “Revenue Commissioner”; for “Local Government” read “Chief Commissioner”; and for “Local Government” read “Chief Commissioner,” and for “official Gazette” read “Gazette of India”—see s. 6 (1) (a), (e), (b), (g) respectively, of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code.

For a notification which was issued by the Chief Commissioner, British Baluchistan, see Gazette of India, 1899, Pt. II, p. 920.

The definition does not include a Conservator of Forests. *The Forest Contractors v. Secretary of State for India*, 1893 P. J. 449.

"Collector."

(9) "Collector"—

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district ; and,

(b) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf :

NOTES.

See S. 3 (8) of Act I of 1879 ; s. 3 (9) of Act XVIII of 1869 ; s. of 34 Act X of 1862 ; s. 19 of Act XXXVI of 1860.

For notification by the Chief Commissioner of Ajmer-Merwara, declaring that "Collector" includes Assistant Commissioners of the Province, see Gazette of India, 1902, Pt. II, p. 501.

Notification No. 2584-S.R.—dated, the 12th October, 1921. In exercise of the powers conferred by s. 2, clause (9) (b) of the Indian Stamp Act, 1899 (II of 1899), the Governor-in-Council is pleased to notify that "Collector" includes the Deputy Collectors in charge of Sub-divisions, Senior Deputy Collectors at the Sadar Stations of the districts, District Registrars including the Registrars of Calcutta, District Sub-Registrars and Sub-Registrars and all officers holding temporary charge of Sub-Registry Offices, who are hereby appointed to be Collectors for the purpose of denoting upon one instrument by endorsement, the payment of duty in respect of instruments as provided for in s. 16 of the said Act. (see Calcutta Gazette Part I, p. 1853, dated 19th October, 1921). "Collector" includes all Deputy Collectors—*vide* the Calcutta Gazette, 1922, Part I, p. 1758.

It includes the additional District Magistrates of Backergunj, Dacca and Mymensingh (249 S.R. dated 12-6-1913) ; the additional District Magistrate of Tippera (3686 S.R. dated 25-5-1909) ; the additional District Magistrate of 24 Perganas (1245 S.R. dated 25-7-1914) ; the senior Deputy Magistrate at Hooghly (326 S.R. dated 24-2-1915) ; the Treasury Officer at Burdwan (2261 S.R. dated 4-8-19 and 2407 S.R. dated 15-8-1919).

Collector for Calcutta.—By Notification No. 532-S.R., dated 23rd February 1921, the Senior Deputy Collector employed on probate work in Calcutta was appointed *ex-officio* Collector in the district of Calcutta for the purposes of ss. 49, 51, 52, 53, 54, and 55 of the Stamp Act, (*vide* the Calcutta Gazette, 1921 Pt. I, p. 351).

(10) "Conveyance" includes a conveyance on sale
 "Conveyance." and every instrument by which
 property, whether movable, or im-
 movable, is transferred *inter vivos* and which is not
 otherwise specifically provided for by Schedule I [or
by Schedule I A, as the case may be]:

NOTES.

See s. 3, Cl. 9 of Act I of 1879; s. 3, Cl. 11 of Act XVIII of 1869;
 s. 62 of the Stamp Act 1891 (54 and 55 vict. c. 39).

Amendment.—The words "or by Schedule IA as the case may
 be" were added by Bengal Act III of 1922; Madras Act VI of 1922;
 Punjab Act VIII of 1922.

Conveyance.—The words "transferred *inter vivos*" were included
 to meet the case of *Maharajnh of Durbhanga* in 7 Cal. 21.

What is a conveyance.—"A conveyance" must convey (i) the
 property (ii) by sale, (iii) or it is a document whereby a property is
 transferred *inter vivos*, (iv) and is not specifically provided for by
 Schedule I or IA of the Stamp Act. For distinction between a
 conveyance and settlement see s. 2 (24), *infra*.

Property.—The words "*immovable property*" has been defined
 in the General Clauses Act (X of 1897), s. 3 (25), as including land,
 benefits to arise out of land, and things attached to the earth, or
 permanently fastened to anything attached to the earth. The same
 Act defines "*movable property* [s. 3 (34)] to mean property of every
 description, except immovable property. See also *Mata Din*
Kasodhan v. Kazim Husain 13 All. 432 (473) and *Joggeswar*
Dutt v. Bhuban Mohan Mitra 33 Cal. 425 at page 432 for discussion
 as to the meaning of the word 'property.' Claims coming within
 the exceptions to s. 6 of the Transfer of Property Act (IV of 1882)
 cannot be said to be property.

"*Property*" is that which belongs to a person exclusive of others
 and which would be subject of bargain and sale. A goodwill of a
 trade is property. *Potter v. The Commissioner of Inland Revenue*, 10
 Ex. 147: 23 L.J. 344 Ex. See also *Re Earnshaw—Wall* (1894) 3 ch.
 156. A book debt of a company is property. *Measures Brothers*
Ltd. v. Commissioners of Inland Revenue (1900) 82 L.T. 689. See
Halsbury's Laws of England vol. 24, page 137.

A grant to H. of the sole right to carry on, with the asphalt to
 be supplied by the Company, the business of asphalt-paving within
 the counties of Lancaster and Chester, is not chargeable as a convey-
 ance on sale because the company had no right to the exclusive
 use of the asphalt in Lancaster and Chester. *Limmer Asphalt*
Company v. The Commissioner of Inland Revenue, 20 W.R. 610:
 6 L.T. 633: 7 Ex. 211: 41 L.J. Ex. 106.

Conveyance for a term.—A conveyance may be for a term of
 years, *Gopal Sitaram v. Desai*, 6 Bom. 674.

The property must be sold.—The word 'sale' has been defined in the Contract Act s. 77 as "sale is the exchange of property for a price." The same word has been explained in the *Transfer of Property Act* s. 54 which enacts that "sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised." See also *Indian Contract Act* (Act IX of 1872), s. 78.

The instrument must show that a title to the property is being conveyed and not merely refer to a completed transaction, *Muhammad Hasham v. Emperor*, 139 I.C. 154 (Lahore).

Conveyance being a transfer for a price, it is necessary to consider what is meant by the expression "price."

Price.—The word "price" though ordinarily meaning money, also means recompense which may not be in money, *Volkurt Brothers v. Vettivelu Nadan*, 11 Mad. 459 (467). See also *Samaratmal Uttamchand v. Govind*, 27 Bom. 696 (698).

"Money" means and includes not only coin but also bank notes, Government promissory notes, bank deposits, and otherwise and generally any paper, obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion, *Reference by the Board of Revenue N.W.P. under s. 47 of Act I of 1879*, 3 All. 788 (793).

The word "Money" in Art. 132 of the Limitation Act "is comprehensive enough to include, not merely money which has been advanced or will be advanced by way of loan, or money which is due on account of an existing debt or will become due on a future debt, but also money which has or will become due on account of non-performance of an engagement that might give rise to pecuniary liability." The word includes "not only cash but also whatever is redeemable by money or saleable for money." *Ram Chand Sur v. Issar Chandra Giri and others*, 48 Cal. 625 : 25 C.W.N. 57 : 32 C.L.J. 278 (284).

Cash.—The word "cash" in the ordinary acceptance of the word has a narrower meaning than money, and when taken in conjunction with the words "Government Promissory Notes" means cash in the ordinary meaning of the word and nothing more. *Sarojini v. Gnanendra*, 23 C. L. J. 241 (251), affirmed by P. C. on Appeal in *Gnanendra v. Surendra*, 24 C.W.N. 1026. See also *R. v. Govinda*, 16 Bom. L. R. 683.

A conveyance has been defined to be an instrument by which property, whether movable or immovable, is transferred on sale; properties which have already been delivered are not transferred by deed, and the valuation cannot be increased on that basis, *In the matter of a Reference under the Stamp Act. s. 46*, 23 Cal. 283 (288); *Seth Rustomji v. The Crown*, 115 P.R. 1918 : 151 P.L.R. 1917 : 1 P.W.R. 1918 : 44 I.C. 261 F.B.

Benefit of a contract.—Where the benefit of a contract for sale of gunny bags was assigned by an instrument, which contained the words "I have sold the whole of my right and interest in this contract and in the goods mentioned therein to the plaintiff," held

that the instrument is a chose-in-action and comes under s. 2 (10) of the Stamp Act, *Nathu Gangaram v. Hansraj Morarji*, 9 Bom. L.R. 119.

Transfer by a trustee to cestui que trust.—A transfer by trustees of trust property to the *cestui que trust* requires no pecuniary consideration, but the parties framed the instrument as a deed of sale and mentioned that money consideration is one of the motives of the execution of the deed, held it is a conveyance and should be stamped as such, *Reference under Stamp Act*, s. 64, 7 Mad. 350 F.B.

Transfer by one Company to another.—Where all the owners of a tea estate purported to convey their rights in the estate of a company; the consideration expressed in the deed being payable in shares and debentures of the company, of which those owners were also directors, at par, is a conveyance, *although it is a conveyance by vendors under one denomination to themselves as purchasers under a different denomination*, *In re Kondali Tea Co., Ltd.*, 13 Cal. 43. See also *In re The Menglas Tea Estate*, 12 Cal. 383. *Reference to the High Court by the Board of Revenue*, 16 W.R. 208. Where the liquidators of the Chartered Mercantile Bank of India, London, and China, Ltd. transferred the assets of the old Company to a new Company under the same name in consideration of the latter taking over all the assets and all the liabilities of the old company and also that the new company should allot sums to the share-holders of the old Bank and pay the costs of liquidation, it was held that the instrument is an instrument of sale and therefore liable to stamp duty under Art. 21, Schedule I of the Stamp Act (I of 1879). *Reference under the Stamp Act*, s. 46, 20 Bom. 432. (In this case there was a grant as to premises).

An instrument by which one company agreed to sell all their business undertaking and assets from 1st June 1930, including goodwill, freehold hereditaments, plants, machineries to another company, would be a mere agreement to sell, if the parties are satisfied with a mere agreement without a regular conveyance, and also if the parties take the risk to evade payment of duty they can do so. *Reference in re the incorporation of Swadeshi Cotton Mills Company, Ltd.* 1932 A.L.J. 394 : 137 I.C. 337 : 1932 A.I.R. 291 (All.) S.B.

Merely agreed to be sold.—Where by an instrument a vendee was authorised to cut down standing trees of more than two feet in circumference in two villages for Rs. 1,600 paid by the vendee within two years from date, but with a condition that he is not to cut down any trees after two years, held that the instrument is an agreement for sale and not a conveyance, *Vohra Mahamadali Lukmanji v. Ram Chandra Anant*, 22 Bom. 785 ; *Heptula Sheikh Adam & Co v. Esafali Abdulali*, 14 Bom. 316.

Not a conveyance.—An instrument to the following effects :—"I am enclosing herewith the original sale deed in respect of land and which I have sold to you for the sum of Rs 1000 and in respect of which I have already received the purchase money from you" was held not to be conveyance, *Seth Rustomji v. The Crown*, 115 P.R. 1918 : 151 P.L.R. 1117 : P.W.R. 1918 : 44 Ind. Cas. 261 F.B.

An instrument, dated 1853, purporting to be a transfer by the executant of the property inherited by her from her husband subject to the payment of his debts, with a provision for the maintenance of the executant and also for retransfer of the property in case she should give birth to a son was held to be not a conveyance and not liable to Stamp duty, *Reference under Stamp Act s. 46*, 16 Mad. 419 F.B. See also *Sital Purshad v. Luchmi Purshad*, 10 I.A. 129 : 10 Cal. 30 : 13 C.L.R. 382.

A document reciting that G. had sold certain lands to H. for Rs. 1,038 and that possession of the same has been given to H. and this receipt is granted on receiving Rs. 700 in cash and for the balance another receipt will be given when that amount is paid, is a receipt and not a conveyance as the document refers to a completed transaction, viz., the sale and it does not show that any title to the lands transferred is being conveyed by the instrument. [The words "*is waste sanadan tahrir kar dete hain*" do not necessarily show that the deed is a conveyance], *Mahammad Hashan v. Emperor*, 139 I.C. 154 (Lahore).

A document whereby the fact of a right having been vested in a certain person, is not a conveyance as the document to be conveyance must show the right is created by that particular instrument in question, *Bageshwari Charan Singh v. Jagarna'h Kauri*, 59 I.A. 130 : 11 Patna 272 : 1932 A.L.J. 186 : 34 Bom. 463 : 36 C.W.N. 250 : 55 C.L.J. 136 : 35 L.W. 217 : 62 M.L.J. 296 : 1932 M.W.N. 660 : 9 O.W.N. 43 : 1932 Ind. Rul. 142 (P.C.) : 13 P.L.T. 279 : 136 I.C. 798 : 1932 A.I.R. 55 (P.C.)

Assignment of a debt.—Where a debtor intimates by a letter to another from whom such debtor is entitled to recover some money, to pay the same over to his creditor, such a letter operates as an assignment of the debt to the creditor of such debtor, and it is a transfer of property in consideration of the debt due to the creditor, and therefore it is a "conveyance" and must be stamped as such, *In the matter of Nandu Bai and others v. Gau*, 27 Bom. 150 (153) : 4 Bom. L.R. 957. See *Doraiswamy v. Doraiswamy Iyengar*, 87 I.C. 382.

Transfer by compromise of a suit.—A transfer of land, in pursuance of a compromise in a suit for maintenance by a widow, in her favour, is a conveyance and must be stamped as such, *Reference under Stamp Act*, 21 Mad. 422. But where the terms of a compromise are embodied in the decree, then such decree need not be stamped as decrees other than decrees in partition suits, are not instruments within the Stamp Act.

Transfer inter vivos.—A dispute having arisen between the Maharajah of Durbhanga and a younger brother of his as to the claims of the latter in the properties of the Raj, the younger brother had, by way of compromise, agreed to waive and relinquish all claims which he had, or might have, on the Maharajah, in consideration of receiving under the Babooana form of grant certain landed property and cash. The Maharajah in turn granted and conveyed to the younger brother such an interest in those properties as was usually conveyed under the Babooana grant, to hold the same as a

Babooana grant according to the custom of the family subject to certain conditions enumerated therein. It was held that "the instrument would, no doubt, have been a conveyance under the Stamp Act of 1869 because it is a deed by which property is conveyed *inter vivos* ; but the definition of a conveyance in the Act of 1879 [See s. 3 (9)] excludes all transactions as conveyances, *which are not made by way of sale* ; and this transfer was clearly not made by way of sale." *In the matter of the Maharajah of Durbhanga*, 7 Cal. 21 (23).

But under the definition as given in this Act, such an arrangement would be a "*Conveyance*."

Mortgages.—Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee and also agreed to pay the Government Revenue until the name of the mortgagee-purchaser was registered in the Collector's books, *held* that the instrument is to be stamped under s. 24 of the Stamp Act as a conveyance and not an agreement, *Sinapaya v. Sivapa*, 15 Bom. 675.

Release.—Where a deed was styled as a deed of release but the terms were : "in consideration for all my rights, I have received Rs. 17,841 and nothing remains due to me in respect of the aforesaid thing" *held* that it is a deed of conveyance as the property was conveyed in consideration of a sum of money," *In re Hiralal Navalram*, 32 Bom. 505 ; 10 Bom. L.R. 730. For other cases whether an instrument is a release or a conveyance, see under "*release*" *infra*.

(11) "duly stamped," as applied to an instrument, "Duly stamped." means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India :

NOTES.

Cf. s. 3 (10) of Act 1 of 1879.

An instrument to be duly stamped

- (1) must bear the proper description of stamp,
- (2) the stamp must be of the proper amount, and
- (3) the stamp must be affixed or used according to the law or rules for the time being in force in British India, and properly cancelled.

Proper description of stamp—Section 11 and rules 13 to 17 prescribe the mode of using adhesive and special adhesive stamps. Rules 4 to 8, 10, 12 and section 13 deal with the use of impressed stamps.

Affixed or used according to law—Rule 11 prescribes the mode of affixing and impressing labels. Sections 17, 18, 19 and 19A lay down when an instrument as to be stamped and Section 12 denotes when, how and by whom adhesive stamps are to be cancelled. For use of postage stamps, see rule 16 *infra*.

Construction.—The words “duly stamped” signify “stamped or written on paper bearing an impressed stamp” *Radha Kant Shaha v. Abhoy Churn Mitter*, 8 Cal. 721 : 11 C.L.R. 310 ; *Kali Churn v. Nobo Kristo*, 9 C.L.R. 272. But under the present Act the old definition has been altered.

According to the definition of the words “duly stamped” it is necessary that an instrument to be duly stamped within that definition, should be stamped with a stamp not only of the amount required by law, but also in the manner required by law, *Reference under Stamp Act s. 46, 7 Mad. 178 (note)*.

S. 2 (11) of the Stamp Act defines the expression “duly stamped” as applied to an instrument, *Reference under s. 57 of Act II of 1899*, 23 All. 213 (214). A deed is duly stamped if the stamp is affixed and cancelled at the time of execution or it having been at any time previously affixed, it is cancelled at the time of execution, *Bhawanji Harbhun v. Devji Panja*, 19 Bom. 635. See also *Motilal v. Jagmohon Dass*, 6 Bom. L.R. 699.

Rules by Government.—If an instrument is executed in a manner, which contravenes a rule framed by Government, but is otherwise sufficiently stamped it is duly stamped if the rule so framed is found to be *ultra vires*, *Reference under stamp Act s. 46, 8 Mad. 532 F.B.* ; *Radha Bai v. Nathu Ram*, 13 All. 66 : (1890) 10 All. W.N. 238.

Writing on the reverse side.—Writing a portion of the deed on the reverse side of a stamp paper does not make the instrument as not “duly stamped.” *Reference under Stamp Act, 7 Mad. 176*.

Omission to endorse by the stamp vendor.—An omission by the stamp vendor to endorse does not make the instrument “not duly stamped.” *Reference under the Stamp Act, s. 46, 11 Mad. 377 F.B.* The absence of the certificate by the stamp vendor as required by the rules framed by Government does not make the instrument not duly stamped. The non-compliance by the Treasury Officer with the rules is not an act by the person purchasing the stamp so that he can be punished for the invalidation of stamp innocently bought by him, *Queen Empress v. Trailakya Nath Baral*, 18 Cal. 39 ; See *Proceedings Nov. 5, 1874, 7 Mad. H.C.R. 36*.

Hundi.—A pro-note for less than Rs. 200 and requiring a stamp of two annas, was held to be sufficiently stamped when written upon an impressed sheet of the value of two annas but bearing the word “Hundi.” *Radha Bai v. Nathu Ram*, 13 All. 66 : 10 All. W.N. 238.

Under rule 5 promissory notes and Bills of Exchange may be written on paper on which a stamp of the proper value with or without the word ‘hundi’ has been impressed.

Documents stamped subsequent to execution.—See s. 17 of this Act. A receipt stamped subsequently to execution but before its production in Court, is inadmissible in evidence because it was not duly stamped. *Jethibai v. Ram Chandra*, 13 Bom. 848. But see *contra*,—"It is sufficient if at the time of its being tendered in evidence it bears sufficient stamp." *Kali Charan Das v. Nobo Kristo Pal*, 9 C.L.R. 272; *Sreemutty Noor Bibi v. Sheikh Rumjan*, 24 W.R. 198.

Question as to sufficiency.—When the question is whether a document bears a sufficient stamp, the document must be looked at as it stands. *Sakharam v. Ram Chandra*, 27 Bom. 279. 5 Bom. L.R. 28. The court in determining whether a document is sufficiently stamped for the purpose of deciding its admissibility in evidence will look at the document itself as it stands, and not at any collateral circumstances which may be shown in evidence. *Ramprasad v. Srinivas*, 27 Bom. L.R. 1122 (1128): 90 I.C. 685: 1925 A.I.R. 527 (Bom.).

Presumption as to sufficiency.—The court shall presume that every document called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law. *The Indian Evidence Act*, s. 89.

Lost Instrument.—Where the original of a compromise petition creating a mortgage, is lost and a certified copy of the petition is filed, the presumption arises that the original petition was properly stamped. *Ahmed Raza v. Abid Husain*, 43 I.A. 264: 38 All. 494: 14 A.L.J. 1099: 18 Bom. L.R. 904: 21 C.W.N. 265: 24 C.L.J. 504: (1916) M.W.N. 548: 1 Pat. L.W. 90: 39 I.C. 11 P.C.

If a hundi is lost a presumption arises under s. 118 (f) of the Negotiable Instruments Act that the hundi was duly stamped which includes a presumption that the stamp was duly cancelled. *Atma-ram Maharal and Sons v. Matandas Devidayal and others*, 126 I.C. 741: 1930 A.I.R. (Sind.) 4.

Stamp according to practice.—Document stamped not in accordance with law, but in accordance with the practice prevailing of stamping such document would be considered as bearing sufficient stamp. *Bajinath v. Ahmed Mussaji Salejee*, 40 Cal. 291: 17 C.W.N. 395 (402): 18 Ind. Cas. 978.

Several Sheets.—A bill of exchange was properly stamped under rule 6 of the rules of the Governor-General in Council when a portion of it appeared to have been written on each of the three sheets of stamp paper of the aggregate value required by law. *Sarada Nath v. Gobind Chandra*, 23 C.W.N. 535 (538).

A pro-note written on two sheets of impressed stamp sewn together, is not duly stamped. *Samad Mir v. Brij Lal*, 73 P.R. 1886.

Non-attestation of each sheet.

Non-attestation of plain sheets which were subjoined, because the entire instrument cannot be written on one sheet, does not make the

instrument as not "duly stamped." *Reference under Stamp Act, s. 46, 8 Mad. 532 F.B.*

(12) "executed" and "execution," used with reference to instruments, mean "Executed and Execution." "signed" and "signature":

NOTES.

Execution.—The word "execution" when applied to a document, is the last act or series of acts which completes it. It might be defined as a formal completion. The contract on a negotiable instrument is, until delivery, incomplete and revocable; it is executed if it is stamped and delivered which completes its legal characters. *Bhawanji Harbhun v. Devji Punja*, 19 Bom. 635 (638). The word "execution" means signature and an instrument which is liable to stamp duty on execution, is not liable to such duty until it is signed, but the fact that unsigned instruments are not liable to stamp duty does not necessarily imply that they are incomplete. *In re the application of Chet Po.*, 7 Bur. L.T. 48: 9 L.B.R. 77: 22 I.C. 75 F.B. See also *In the matter of Shyam Sundar Lall Shankar Lall*, 50 All. 504: 26 A.L.J. 277: 1928 A.I.R. 162 (Allahabad): 118 I.C. 173.

Instrument by several persons.—If a document is drawn up in the names of several persons and it was the intention of the parties that all of them should execute it, the document is not complete and operative until all of them have done so. What was the intention of the parties is a question of fact. *Nelthiri Menon v. Gopalan Nair*, 39 Mad. 597: 29 M.L.J. 291: 1915 M.W.N. 586; 2 L.W. 714; 30 I.C. 713. See also *Sivasami Chetty v. Serugan Chetty*, 25 Mad. 389: 12 M.L.J. 17; *Latch v. Wedlake* (1840) 11 A. and E. 959: 113 E.R. 678.

Burmese documents.—Unsigned instruments in Burmese language after the Stamp Act, 1899 has come into force cannot be treated as executed. *Maung Po Diu v. Maung Po Nyein*, 4 U.B.R. (1921) 80: 66 I.C. 360.

When a formal deed of mortgage is drawn up on a palm leaf, the secondary evidence of its contents will be admissible, unless it was signed by the mortgagor, but where a formal deed was drawn up and executed by signing, then secondary evidence would be inadmissible for lack of stamp, *Ma Saw v. Maung Ba*, 5 Rangoon 650: 106 I.C. 476: 1928 A.I.R. 32 (Rangoon).

Signed.—See the *General Clauses Act* (Act X of 1897) s. 3 (52). "Signing may be by writing the name in any part of the document, provided it be intended to operate as an acknowledgment by the party that it is his instrument." *Mathura Das v. Babulal*, 1 All. 586 (590); *Gangaram v. Lachiram*, 19 C.W.N. 611: 28 I.C. 705; *Surajmal v. Bank of Behar*, 60 I.C. 746 (Pat.); *Mahalakshmi Bai v. The Firm of Nageshwar Pursotam*, 10 Bom. 71.

Addition of certain specified words at the top and bottom of letters which is admittedly the usual way amongst persons of that class, showing that the letter is to be regarded as written by their authority, is a signing within the meaning of this clause. *Gangadhar Rao Venkutesh v. Shidramapa Balapa Desai*, 18 Bom. 586 (590). (where 'Guru Samarth' were written); *Nirmal Chunder Bandopadhyaya v. Saratmoni Debya*, 25 Cal. 911 : 2 C.W.N. 642. See *Sadasook Agarwala v. Baikantha Nath Basumia* 31 Cal. 1043 : 9 C.W.N. 88 where the words "likhitan khod" were written, and *Andarji Kalyanji v. Dulabh Jeevan*, 5 Bom. 88; *Jekisson Bapuji v. Bhowar Bhoga Jetha* 5 Bom. 89 where the words "dustakhat khod" were used. These were held to be signatures as this is the usual mode of writing. In *Dulabh Venmali v. Rehmal Jemal* 14 Bom. 511, the mere writing of the account by the debtor was held to be sufficient.

By illiterate persons.—A debtor's signature need not necessarily be made by writing his name on the document. An illiterate debtor by making mark at the foot of an acknowledgment can make it a valid one within the contemplation of this clause. *Bhimanagowda v. Eeranah*, 7 Mad. H. C. Rep. 358. It is sufficient if the illiterate person touches the pen and requests another person to sign the deed. *Bhagwat Prasad v. Sher Khan* 94 I.C. 985 : 1926 A.I.R. 489 (Oudh). See also *Thakuri Molla v. Ram Tahal Tewari* 52 All. 489 : 1930 A.L.J. 559 : 127 I.C. 527 : 1930 A.I.R. 57 (All.) : 1930 I.R. 927 (All.).

Thumb marks.—See *Mutsuddi Lal v. Harkesh*, 36 All. 11 : 11 All. L.J. 966 : 21 Ind. Cas. 601 F.B.

"Impressed Stamp." (13) "impressed stamp" includes—

- (a) labels affixed and impressed by the proper officer, and
- (b) stamps embossed or engraved on stamped paper :

NOTES.

An endorsement by Collector as to sufficiency of stamp is an impressed stamp. *Reference*, 11 Mad. 31. See also s. 49, (d) Explanation and also rules 6, 8, 10 & 12 in the Appendix. Stamps are embossed or perforated by proper office under rule 10 These include printed stamp paper. For coloured impression see rule 8. As to refunds of impressed stamps see s. 49 *et seq.*

(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded :

"Instrument."

NOTES.

This sub-section is new. The word "documents" is not defined in this Act but is defined in the *General Clauses Act* (X of 1897) s. 3 (16) as follows :—"Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter. See also *Evidence Act*, section 3.

An entry in a book (a register of sums payable with respect to the letting out of machinery for pressing sugarcane etc.) kept by the owner of the machinery to the effect that certain machinery was leased in consideration of a rent to be paid in a certain month and in default to pay interest at the rate of 2 per cent. per mensem and which was attested by the thumb marks of the heirs, is an instrument within the meaning of s. 2 (14) and liable to be stamped as a memorandum of agreement under Art. 5 of the schedule. *Mutsaddi Lal v. Harkesh*, 36 All. 11 : 11 All. L. J. 966 : 21 I. C. 601 F.B. A certificate of sale is not an instrument within this definition before the Judge signs it. *Collector of Ahmedabad v. Rambhan*, 32 Bom. L.R. 1084 : 128 I.C. 31 : 1930 A.I.R. 393 (Bom.).

Letter.—A letter acknowledging the receipt of a certain sum of money as a loan two months before for a particular period and at a particular rate of interest and stating that the loan has been duly entered in the khata book and agreeing to repay the same with interest on the due date, is an "instrument" within the meaning of this clause and is chargeable with stamp duty as an agreement. *In re V. R. S. A. R. Raman Chetty*, 4 L. B. R. 324 : 14 Bur. L. R. 192.

(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and award by an arbitrator directing a partition :

NOTES.

Cf. s. 3 (11) of Act 1 of 1879 and s. 3 (22) of Act XVIII of 1869.

Amendment.—The words "or any civil court and award by an arbitrator directing a partition" were added owing to the decision in *Amarsi v. Dayal*, 9 Bom. 50. Under the previous act an award by an arbitrator was not within the definition.

The essential elements are :—

- (1) Presence of an intention to divide. This may be by a suit or an agreement amongst the co-owners.

(2) If by proceedings, then

(a) by the final order of a Civil Court, or (b) by the final order of a Revenue Authority, or (c) by an award by arbitrators.

(3) The division must be between co-owners.

Divide.—The word “division” has a twofold application. “There may be a division of a right, and there may be a division of property; and thus, after the execution of the instrument, there was a division of right in the whole property, although in some portions, that division of right was not intended to be followed up by an actual partition by metes and bounds, that being postponed till some future time, when it would be convenient to make that partition.” *Appovier v. Rama Subba Aiyar and others*, 11 M.I.A. 75 (91).

Under Hindu Law “separation” i.e. severance of the status of jointness is a matter of individual volition, and agreement between all the coparceners is not, still less is actual division and distribution of the property held jointly, essential to the disruption of the joint status. *Musst Girja Bai v. Sadasiv Dhundiraj*, 43 I.A. 151 : 42 Cal. 1031 : 20 C.W.N. 1085 (1096) : 24 C.L.J. 207 : 14 A.L.J. 822 : 18 Bom. L.R. 621 : 31 M.L.J. 445 : 37 Ind. Cas. 321. See also *Suraj Narain v. Ikbai Narain*, 40 I.A. 4 : 35 All. 80 : 17 C.W.N. 333 : 17 C.L.J. 288 : 15 Bom. L.R. 456 : 11 All. L.J. 172 : 24 M.L.J. 345 : 18 Ind. Cas. 30 ; *Mukund Dharman Bhoir v. Balkrishna*, 54 I.A. 413 : 52 Bom. 8 : 29 Bom. L.R. 1496 : 46 C.L.J. 413 : 32 C.W.N. 203 : 53 M.L.J. 463 : 4 O.W.N. 845 : 105 I.C. 703 : 1927 A.I.R. 224 (P.C.).

Agree to divide.—The status of joint ownership is determined by an actual partition or by agreement by mutual consent to a division of the joint estate. *Ram Chandra Dutt v. Chunder Coomar Mundal & others*, 13 M.I.A. 181.

A partition may be effected by agreement although no actual division of the property may have been made by metes and bounds or otherwise. *Runjeet Singh v. Kooer Gunraj Singh*, 1 I.A. 9 (20) ; *Ananta v. Damodar*, 13 Bom. 25 ; *Tej Pratap v. Champa Kalee*, 12 Cal. 96 ; *Ashabai v. Haji Tyeb Haji*, 9 Bom. 115.

When the members of an undivided family agree amongst themselves with regard to particular property, that it shall henceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with ; and in the estate each member has thenceforth a definite and certain share, in which he may claim the right to receive and enjoy in severalty, although the property itself has not been actually severed and divided. *Appovier v. Rama Subba Aiyar*, 11 M.I.A. 75 (90).

By an *Yadast* or agreement executed in Travancore State two brothers divided their properties situate in British India and in Travancore State and it provided that the partition is to take effect from the date of execution of the instrument and properties are to be

enjoyed separately but that separate deeds will be executed for properties in British India and Travancore, respectively and till then the yadast shall remain in force, held that the *Yadast* is a deed of partition within s. 2 (15) of the Stamp Act and chargeable with duty under Art. 45 of that Act. *Rajangan Aiyar v. Rajanganier Minor etc.* 38 M.L.J. 330 : 11 L.W. 556 : 55 I.C. 965.

Partnership—Division.—Where partners divide amongst themselves certain debts of the partnership business to be collected and appropriated by them but they continued to be joint as regards other items, the instrument is an instrument of partition and not an instrument of dissolution of partnership. *Choturam v. Ganesht*, 3 Bom. L.R. 132.

Releases.—One of three brothers executed a release in favour of the eldest brother of immovable property of his share by accepting a certain amount of cash and securities due to the family. Next another brother executed in favour of the same eldest brother another release but they thereby agreed to divide the remaining property by the eldest brother handing over to him the securities in money. It was held that the 1st deed was an instrument of partition for its effect was to divide the property between the co-owners, and the 2nd instrument was also an instrument of partition as it effected partition of the remaining properties between the remaining co-owners. *In re Govind Pandurang Kamat*, 35 Bom. 75 : 12 Bom. L.R. 936 : 8 I.C. 632 ; *Eknath Gownde v. Jagannath S. Gownde*, 9 Bom. 417. See also *Jiban Kumar v. Govind Das*, 38 All. 56 (58) : 13 A.L.J. 1109 : 31 I.C. 404 F.B. where the parties claimed against each other. See also *Mukund Dharman Bhoir v. Balkrishna*, 54 I.A. 413 : 52 Bom. 8 : 46 C.L.J. 413 : 32 C.W.N. 203 : 29 Bom. L.R. 1496 : 53 M.L.J. 463 : 105 I.C. 703 : 1927 A.I.R. 224 P.C. where the release was executed in ignorance of the rights of the parties.

See also *Sakharam Krishnaji and another v. Madan Krishnaji and others*, 5 Bom. 232 where it was further held that a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it is a declaration within s. 17 of the Registration Act ; but a letter containing an admission direct or inferential, that a partition took place does not declare such a right.

Acknowledgment of receipt of a share.—Where three out of seven brothers, who constituted an undivided Hindu joint family, executed documents whereby each acknowledged the receipt of his share of the family property made over to him "on a division of the family property being effected" and also acknowledged himself to be liable for one-seventh share only and the instrument concluded with the statement that the executants have no further claim in the property. Held that the instruments are deeds of partition. *Reference from the Board of Revenue under s. 46 of the Indian Stamp Act, 1879*, 15 Mad. 164 F.B.

A Hindu joint family consisting of three brothers jointly ownep shares in a limited company, which stood in the name of the eldest brother. The three brothers made an *oral partition* of their properties, but these shares were not divided and continued to remain in the

name of the eldest brother, who subsequently transferred the shares of the brothers to them by two instruments. *Held* that the instruments are deeds of partition and should be stamped under Article 45 of the Indian Stamp Act. *Superintendent of Stamps v. Chimanlal Lalubhai*, 47 Bom. 321 : 25 Bom. L.R. 112 : 73 Ind. Cas. 718. See also *Kachubhai v. Krishnabhai*, 2 Bom. 635.

The facts of this case do not bring the deeds within the definition of an instrument of partition. The deeds of transfer were not instruments by which partition was effected but were mere evidence of a former partition. The brothers did not divide or agree to divide by the deed of transfer. But it seems the law embodied in this ruling was also embodied in previous Bombay decisions. See *contra* the case of *Mukund Dharman Bhair v. Balkrishna* 54 I.A. 413 : 52 Bom. 8 : 32 C.W.N. 203 : 46 C.L.J. 415 : 29 Bom. L.R. 1496 : 53 M.L.J. 463 : 4 O.W.N. 845 : 105 I.C. 703 : 1927 A.I.R. 224 (P.C.) where it was held that a deed called a deed of release in ignorance of the right of executant is not a deed of partition as "there is no suggestion in any part of the deed that the parties were proceeding upon the basis that there was a joint family of which they are members, or that they were taking part in a division of the joint family property."

In this connection it is well to remember the dictum of the Calcutta, High Court in *Upendra Nath Banerjee and another v. Umesh Chandra Banerjee*, 12 C.L.J. 25 : 15 C.W.N. 375 : 6 I.C. 346 where it was laid down that "the essence of the matter is wheather the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction.".....i.e. "whether the intention of the parties was that the document should be the only repository and the appropriate evidence of the partition."

Lists of property.—Lists of money-bonds and lands prepared by members of joint family indicating what portions have gone to the share of each and concluding with statements that each have received his share and were followed by the family living separately, are to be considered as deeds of partition. *Ganpat Kirparam v. Supra Kirparam*, 32 Bom. 509 : 10 Bom. L.R. 723. See also *contra Nilkantha v. Maruti*, 1893 P.J. 203. These decisions cannot be said to be in accordance with the present definition of the instrument of partition.

See also the decision in S.A. 2479 of 1928 (*Kshetra Mohan Pal v. Hazari Talukdar*) decided by *Guha and M. C. Ghosh*, J. J., on 31-5-32 unreported.

Final order.—A decision cannot be said to become final until the time for the last appeal allowed has expired, or, if appealed, until it has become final by the decree of the ultimate court. *Sheikh Erax v. Mokuma Bibi*, 1 All. 134.

A final judgment determines the whole suit. *Justice of the Peace for Calcutta v. Oriental Gas Co.*, 8 B.L.R. 452. To make an order chargeable under s. 2 (15) it must effect an actual division of the property. It is not enough that an order for demarcation of the

properties by metes and bounds has been passed. *Tiruvengadathamiah v. Mungiah*, 35 Mad. 26 : (1911) 2 M.W.N. 516 : 12 Ind. Cas. 775. See also *Sesha Chalam Pillai v. Alwar Chetty*, (1911) 2 M.W.N. 515 : 12 Ind. Cas. 769.

Final order would be the order which embodies the result and terminates the proceedings in a suit for partition. *Krishnasami v. Rajagopalu*, 18 Mad. 87.

Final order means the final order of the lowest Court of original jurisdiction empowered to pass an order for effecting partition at the time it was passed. *Stamp reference by the Board of Revenue*, 36 All. 137 : 12 All. L.J. 113 : 1 O. L. J. 190 : 23 I.C. 98 F.B.

The preliminary decree in a partition suit is not chargeable as an instrument of partition as it merely declares the shares of the plaintiffs. In order that a decree may be chargeable with duty it must effect an actual division of the property. Proceedings to divide the property cannot be said to be proceedings in execution. *Manugchit Sai and others v. Manug Thein and others* 1932 A.I.R. 120 (Ran.)

By a Civil Court.—A decree made in accordance with commissioner's reports by a Civil Court is a final order effecting a division of property and must be stamped as an instrument of partition. *Balaram v. Ram Krishna*, 29 Bom. 366 : 7 Bom. L.R. 308; *Tadepallipeda v. Tadepalli Pichayya*, 6 L.W. 488 : 42 Ind. Cas. 356; *Prince Mirza Suraiya Qadr. v. Nawab Qudsia Begum*, 24 Ind. Cas. 643.

A suit for partition does not terminate until the decree is engrossed on paper as required by the Stamp Act and the Judge signs the decree so engrossed. Orders confirming the Commissioner's report and directing a final decree to be drawn up are interlocutory orders. *Jalindra Mohan Tagore v. Bejoy Chand Mahatap*, 32 Cal. 483.

Compromise.—A decree made in accordance with consent of an instrument parties allotting specific shares in the properties to several persons is of partition. *Thiruvengadathamia v. Mungiah*, 35 Mad. 26 : 1911 Mad. W.N. 516 : 12 Ind. Cas. 775. A partition decree passed on compromise but which had been acted on for several years can not be challenged as unstamped. *Raja Udaijiram v. Rajeshwar*, 67 Ind. Cas. 310.

By Revenue authority.—The words "final order" in s. 3 clause 11 [Section 2 (15)] mean an order passed by a Revenue Court after the partition has been made declaring the various allotments of land. The duty shall be calculated on the market value of the entire property and not merely on the value of the separated share. The rules under the Court Fees Act should not be resorted to for the purpose of valuation. *Reference by Board of Revenue N.W.P. under Act 1 of 1879*, 2 All. 664 F.B.

Award.—*agreement to refer to arbitration.* An instrument, whereby members of a joint Hindu family agreed to be bound by an award of arbitrators for partition, is an agreement to divide property in severalty, and therefore is a deed of partition. *In re. Vasantji*

Haribhai, 15 Bom. 677. See also *Krishna Pada v. Ballaram*, 19 Mad. 290; *Subbaraya v. Sadasiya*, 20 Mad. 490.

Under the Act of 1879 an award by an arbitrator was not an instrument of partition but under the present act an award by an arbitrator is an instrument of partition. Therefore an agreement to refer to arbitration does not come within this clause.

An Award by an arbitrator directing a partition.—Before the Stamp Act (Act II of 1899), an award by arbitrators directing a partition was not included in the definition of partition under s. 3 (11) of the Stamp Act of 1879 (Act I of 1879) and such an award of partition executed before the passing of the Act of 1899 will be received by Courts as correctly stamped if stamped with a stamp of Rs. 5, if there be no reason to suspect that the parties entered into partition disguised in the form of an award to avoid payment of duty. *Sukh Dial v. Fani Ram*, 29 P.L.R. 1916 : 29 P.R. 1915 : 27 I.C. 489; *Ratanchand v. Ghasita Mal*, 1900 P.L.R. 459; *Gulab Singh v. Mohar Singh* 160 P.L.R. 1906.

Signature by parties interested by way of assent to the award makes the award an instrument of partition and it should be stamped accordingly. *Amarsi v. Dayal*, 9 Bom. 50.

An award by arbitrators which indicates the division of property among rival litigants, is an instrument of partition, even though under the terms of the reference, the arbitrators are not to divide the property but only to make an award. *Kali Das v. Tribhuvandas*, 31 Bom. 68; 8 Bom. L.R. 869. See also *In Re Vasanji Haribhai*, 15 Bom. 677.

An award by arbitrators directing partition of property, if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition and should be stamped accordingly even under Act XVIII of 1869. An "instrument of partition" includes in its definition an award by arbitrators directing partition. *Syed Mohammad Hameed v. Syed Manzoor Hussain*, 69 Ind. Cas. 807 : 1922 A.I.R. 283 (All.); *Tek Lal Singh v. Sripati Chowdhury* 18 C. W. N. 475; *Jagannath Shamlal, etc., v. Rambux*, 6 C. P. L. R. 95 (97).

The Division must be between co-owners.—An instrument whereby co-owners of any property divide or agree to divide any property in severalty is an instrument of partition. *In re Govind Pandurang Kamat*, 35 Bom. 75 : 12 Bom. L.R. 236 : 8 Ind. Cas. 632. See also *In re Vasanji Haribhai* 15 Bom. 677; even if the parties erroneously describe themselves as co-owners, *Reference under Stamp Act*, 12 Mad. 198 F.B. See also *Jiban Kumar v. Gobind Das*, 38 All. 56 (58); 13 A.L.J. 1109 : 31 I.C. 104 F.B. where as each of the claimants to the property of a deceased person claimed the entire property to the exclusion of the other, the High Court construed the instrument amongst them settling these differences to be a deed of release.

See also *Reference under the Stamp Act*, s. 46. 18 Mad. 233 where the son relinquished his share to the ancestral property in consider-

ation of payment of his debts and a life-estate in some lands. The deed was construed to be a deed of release.

If J. and S. relinquish their right in favour of their brother E. in consideration of discharge by 2 of certain debts and payment of annuity to J. and S. the deed is a deed of release and not a deed of partition. *Elknath S. Gownde v. Jagannath S. Gownde and another.* 9 Bom. 417.

Not a deed of partition.—A document whereby enjoyment for life of a portion of the joint family property is secured with a reversion in favour of his son in case of a future partition, should be stamped as a deed of release although it does not purport to renounce any claim to any property. It is not a deed of partition. *Reference under Stamp Act, s. 46, 18 Mad. 233 F.B; In the matter of Maharajah of Darbhanga, 7 Cal. 21.*

Where the father of the plaintiff executed in 1907, a deed called a deed of release in favour of his brother under the conviction that all the estate was the self acquisition of his father and brother and that the executant had no interest in it by birth and that he could not make any claim to the property, and afterwards one of his sons instituted a suit for partition of the entire family property, the Judicial Committee of the Privy Council in determining the nature of the instrument said:—"There is a two-fold application of the word 'division' in connection with a partition. In the first place, there is separation, which means the severance of the status of jointness. That is a matter of individual volition; and it must be shown that an intention to become divided has been clearly and unequivocally expressed, it may be explicit declaration or by conduct. Secondly, there is the partition or division of the joint estate, comprising the allotment of shares, which may be effected by different methods. In their Lordships' opinion the deed of 1907 does not operate either as a separation of status or as a partition of joint family property." *Mukund Dharman Bhoir v. Balkrishna Padmanji*, 54 I.A. 413 : 52 Bom. 8 : 32 C.W.N. 203 ; 46 C.L.J., 413 : 29 Bom. L.R. 1496 : 53 M.L.J. 463 : 4 O.W.N. 845 : 105 I.C. 703 : 1927 A.I.R. 224 P.C.

Documents containing notes.—A document signed by members of the family and attested by witnesses, which mentioned that certain properties were allotted for the maintenance of parents, and also embodies particulars of the properties allotted to the share of a brother, and also contained an agreement for future division is not a deed of partition, as it does not purport to destroy the joint interest of the parties in the properties or create sole interest in the person whose share it records. As regards the future division, the document should be stamped as an agreement. *Reference under Stamp Act s. 46, 7 Mad. 385 F.B.*

(16) "lease" means a lease of immovable property,
"Lease." and includes also—

(a) a patta ;

(b) a kabuliyat or other undertaking in writing.

not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property ;

(c) any instrument by which tolls of any description are let ;

(d) any writing on an application for a lease intended to signify that the application is granted :

NOTES.

See S. 3 (12) of Act I of 1879 and s. 3 (15) of Act XVIII of 1869.

What is a lease.—A lease has been defined in the Transfer of Property Act (Act IV of 1882) as :—“A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms.”

An engagement by a sub-proprietor of land to pay to a superior proprietor a sum of money as consideration of a grant of the right to farm dues, in the nature of rent, is a lease within the meaning of the general Stamp Act, 1869. *The Collector of Tanjore v. Ramasamier*, 3 Mad. 342 F.B.

The test.—*Lease or License.*—A Railway Company although prohibited by the order of the Government of India from executing leases of lands in their possession, granted permission to certain coal merchants to stack coal on plots in the land in the occupation of the Railway Company. A question having arisen whether the documents granting permission require to be stamped, the matter came before the High Court, *held*, that the documents containing the permission are not leases requiring to be stamped as such under Art. 30 of Schedule 1-A of the Stamp Act of 1899, but were mere licenses which fell within the description of “agreements nor otherwise provided for” under Art. 4 (c) of the same schedule.

The test of whether a document was a lease or not is whether it vests any exclusive interest in immovable property in the transferee or whether it gave him merely a right to enter on the property and to do something thereon. *It is not the right of the lessor to grant the lease but the interest intended by him to be created by the instrument.*

A lease is a grant of property for a time by one who has a greater interest in the property, the consideration being usually the payment of rent.

A license, on the other hand, is a permission to do some act which without such permission, would be unlawful to do. *The Acting*

Secretary, Board of Revenue v. The Agent South Indian Railway, Ltd., 48 Mad. 369 : 48 M.L.J. 161 : 86 I.C. 688 : 1925 A.I.R. 434 (Mad.) F.B.

There was an agreement with the applicant who held certain lands under the Municipality on terms of a fixed compensation for use and occupation by him as licensee. Under the agreement rent was paid monthly and a month's notice to quit the land was provided, held that the agreement was a lease. *Emperor v. Sherif Dadumiyaji*, 32 Bom. L.R. 332 : 126 I.C. 872 : 37 Cr.L.J. 1100 : 1930 A.I.R. 165 (Bom.) : 1930 I.R. 440 (Bom.)

Kabuliyat.—A Kabuliyat to pay rent is a lease. *Patil Vahala-behari v. Sayyad Mussamiya*, 1838 P. J. 41; *Bhopal v. Chatter Singh*, 8 O.C. 197.

Counterpart of a lease—Marupat.—A marupat is a counterpart of a lease on a deed executed by a tenant promising certain rent and must be stamped both as a counterpart and a mortgage. *Govindan Nambudri v. Ottathayik Moideen*, 41 Mad. 468 : 33 M.L.J. 693 : 42 I.C. 943 F.B. dissented from in *Secretary to the Commissioner of Salt Abkari and Separate Revenue, Madras*, 43 Mad. 365 : 38 M.L.J. 506.

Undertaking in writing to cultivate, occupy etc.—The words "undertaking to cultivate or occupy" used in s. 3 of Act VIII of 1871 (Registration Act) mean accepted undertaking giving to the lessee his right in the land leased. *Apa Budgavada v. Narhari*, 3 Bom. 21.

Tolls of any kind.—Toll is an imposition for the privilege of using a bridge. *Ram Pitam v. Shoobul Chunder*, 15 Cal. 259; or a Ferry, *Deputy Commissioner of Rohri v. Denmat Walad Chelaram*, 1883 P.J. 11; or a Market, *The President of the Taluk Board, Kundapur v. Burde Lakshminarayana Kamphi*, 31 Mad. 54 : 17 M.L.J. 537; or a Road, *In the matter of petition of Bunko Behary Ghose*, 11 W.R. 26; *Goodrich v. Venkanna*, 2 Mad. 104; or a fishery, *Midnapore Zemindary and Co. v. Trailokya Nath Halder*, 51 Cal. 110.

Granted.—Where a proposal to take a lease was made in writing and the plaintiff landlord wrote the words "*Manzur Kar Data*" (granted) on the deed, held, that the instrument was thereby converted into a lease but if the acceptance was made orally the deed need not have been stamped. *Syed Suflur Reja v. Amzad*, 7 Cal. 703 : 10 C.L.R. 121. See also *Choonee Kuntar v. Chundee Lall Das*, 14 W.R. 178; *Bibee Keheroonissa v. Abdul Gunee*, 17 W.R. 509. See also *Boyd v. Krieg*, 17 Cal. 548, where the word "approved" was written.

Agreement to lease.—An agreement to lease where no rent is reserved and no premium is paid does not come within the schedule to the Stamp Act and is not liable to Stamp duty. *Sunder Koer v. Emperor*, 1 Pat. L.J. 366 : 3 Pat. L.W. 72 : 20 C.W.N. 923 : 36 I.C. 175. An agreement for a lease must be a document which effects an actual demise and operates as lease, *Hemanta Kumari v. Midnapore Zamindary Co., Ltd.*, 47 Cal. 485 : 31 C.L.J. 298 : 24

C. W. N. 177 P. C. See *Panchanon Bose v. Chandi Charan Misra*, 37 Cal. 808 : 14 C.W.N. 874 (which is a case under the Registration Act).

A *Bainapatra* acknowledging a receipt of earnest money but under which no possession was delivered, does not effect a present demise and is not an agreement to lease. *Harinath Bandopadhyaya v. Promotho Nath Roy Choudhury*, 25 C.W.N. 550. See other Cases under Art. 35 *infra*

Agreement to take land.—Where a party executing an instrument agrees to take land for 10 years and to surrender it at the end of the period with a further stipulation that if he holds over he will pay at an increased rate, the instrument is a lease. *Viltroji Somaji v. Tukaram Gangaji*, 1880 P.J. 331.

Agreement to lease in a petition of compromise.—An agreement to lease in a deed of compromise does not require stamp as the petition merely records a previous oral agreement. *Pitamber Gain v. Uddhab Mandal*, 12 C. W. N. 59 : *Hemanto Kumari v. Midnapore Zemindary Co., Ltd.*, 47 Cal. 485 : 31 C.L.J. 293 P.C.

Correspondence.—Where a complete agreement for renewal of a lease is contained in a correspondence independently of a draft and an engrossed lease, held that the correspondence required to be stamped and penalty paid before the same can be admitted in evidence. *Boyd v. Krieg*, 17 Cal. 548 ; *Bijoy v. Howrah Amla Light Railway Co., Ltd.*, 33 C.L.J. 177 (181). (See s. 35 of the Stamp Act).

Landlord and tenant.—An instrument purporting to create relationship of landlord and tenant is a lease. *Saminathayan v. Saminathayan*, 4 Mad. H.C.R. 153.

A *daklad* or settlement by auction to the highest bidder is not a lease as neither the period nor the conditions of settlement are embodied and also as the settlement by auction is a verbal settlement. *Sir Rameshwar Singh Bahadur v. Shaikh Kitab Ali*, 1926 C.W.N. (Pat) 361 : 1926 A.I.R. 487 (Pat).

Lease and hypothecation.—Where land was leased for a term but in the instrument creating the lease, the lessee hypothecated certain of his properties for the due performance of his obligation *viz.* payment of the rent payable by him, the instrument is a deed of mortgage and is to be stamped as such. The mortgage is not in this case a distinct matter from the lease and the instrument does not comprise several distinct matters, therefore, the stamp duty is payable according to the higher of the two duties. *Reference under Act. I*, 1879, s. 49, 17 All. 55 : (1894) All. W.N. 204.

Where properties were mortgaged for a term and in the instrument it was stipulated that the annual profit was to go to satisfy the interest and principal, held that instrument is a lease and a mortgage and should be stamped as a mortgage. *Es parte Hill*, 8 Cal. 251 : 10 C. L. R. 33. See also *Ishan Chunder v. Sooja Bibee*, 15 W.R. 331 : 7 B.L.R.A.C. 14 ; *Nana Bin Saru v. Jati Bin Birnji*, 1884 P.J. 226.

Not a lease but a mortgage.—Where by an instrument a loan was obtained and by it the party advancing the loan was to be put into possession of the land demised for 12 years but it contained no provision as to repayment of loan, *held*, that the instrument is a usufructuary mortgage and not a lease. *Reference under Stamp Act*, s. 46, 21. Mad. 358.

Zuri-peshgi lease is a security to the tenant for money advanced. *The Bengal Indigo Company v. Raghobur Das*, 24 Cal. 272 P. C. : 1 C.W.N. 63.

Not a lease but a sale.—An instrument purporting to create a perpetual lease, reserved no profits to the lessor and the rent reserved in the lease was equivalent to the revenue payable and also reserved no right of re-entry. It was held to be a deed of sale and not a lease. *Gopal Sahu v. Nand Kumar Singh*, 5 Luck, 72 : 7 O. W. N. 438 : 123 I. C. 53 : 1930 A.I.R. 300 (Oudh) : 1930 I. R. 146 (Oudh).

Amaldastak.

- *Amaldastaks* are not leases as these are orders to the people to go and take possession and do not create any tenancy right. *Ilaargobind Rai v. Keshwa Prasad Singh*, 1924 Pat. C.W.N. 297.

Doul Darkhast.—A *doul darkhast* is a proposal by a tenant to hold land at a certain rent and is not a lease nor an agreement to lease but if it is accepted by a landlord it is a different thing. *Lall Jha v. Negroo*, 7 Cal. 717 ; *Maharaja Luchmissur v. Musst. Dakho*, 7 Cal. 708 ; *Choonee Mundar v. Chundee Lal Das*, 14 W. R. 178 confirmed on review in *Choonee v. Chundee*, 14 W.R. 334.

Muchalka.

An agreement to pay rent in the ordinary form of *Muchalka* given by a tenant in possession, is not a lease. *Abdulla Rawutan etc. v. Subbarayyer*, 2 Mad. 346 (348).

Not a lease.—*No rent reserved.*—An agreement by an owner of land with a tenant for a period of ten years whereby the latter undertook to plant the land with casuarina trees worth about Rs. 1,000 ; and further that the trees are to be cut at the end of the term at the expense of the parties and the landlord (the plaintiff) is to get half of the sale proceeds, was embodied in a registered instrument, which was not stamped ; *Held* by Srinivasan Aiyangar J., that as no premium is paid and as no rent is reserved nor any premium is payable, the agreement is not a lease. *Sheshayya v. Venkatasubhayya Chetty*, 31 M.L.J. 234 : 39 I.C. 448.

An agreement for a lease whereby no rent is reserved and no premium is paid or money advanced, is not included in the schedule and does not require a stamp. *Sunder Koer v. Emp.*, 1 Pat. L. J. 366 : 3 Pat. L. W. 72 : 20 C.W.N. 923 : 36 I.C. 175.

Manufacture.—An instrument whereby monopoly of manufacture of spirit is granted is not a lease. *Reference under Stamp Act*, 2 All. 654 F.B.

Entry in a book.

A land was let to a lessee under a verbal agreement and the lessee entered upon the land. An entry was made in the book of the lessor showing the amount of rent and the area of tenancy and was signed by the lessee; *held* that the entry in the book did not, though signed by the tenant, amount to a lease or an agreement to a lease but operated as an admission only. *Narain Coomary v. Ramkrishna Das*, 5 Cal. 861.

[(16A) “marketable security” means a security of such a description as to be “Marketable security.” capable of being sold in any stock market in British India or in the United Kingdom :]

NOTES.

This sub-section is new.

Amendment.—Cl. (16a) was added by s. 2 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

This definition is the same as that given in the Stamp Act in England 1891 (54 and 55 Vic. C. 39) Ss. 82 & 122.

“It is an instrument which will be treated on the Stock Exchange as something which can be bought and sold” *Brown, Shipley & Co. v. Inland Rev.* (1895) 2 Q.B. 598 : 73 L.T. 377 : 14 R. 171.

It does not involve any hypothecation of property for the debt for which it is issued. It is a promissory note and also a security and is chargeable with stamp provided in the Act. *Speyer Brothers v. Commissioners of Inland Revenue*, 1907, 1 K. B. 246.

(17) “mortgage-deed” includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property :

NOTES.

See s. 3 (13) of Act I of 1879 ; s. 3 (18) of Act XVIII of 1869. See also s. 86 of the Stamp Act, 1891 (54 and 55 vict. C. 39) where the meaning given is different from this definition.

Includes.—The use of the word ‘includes’ indicates that this definition is not exhaustive. See *In the matter of the petition of Nasibun*, 8 Cal. 534 (536) ; *Empress v. Ramanjaya*, 2 Mad. 5 (7). It includes charges under sec. 100 of the Transfer of Property Act.

The essentials are :—

(i) The purpose must be securing money advanced or to be advanced.

(ii) By way of loan or an existing or future debt or the performance of an engagement.

(iii) A transfer or creation of a right by one person in favour of another.

(iv) A right in or over a specific property.

(v) By a mortgagor in favour of a mortgagee.

In order to create a mortgage the property transferred must be made a security and the money advanced must be a loan. *Gobardhan v. Raghubir Singh*, 1930 A.L.J. 799 : 124 I.C. 405 : 1930 A.I.R. 101 (All.). If there be no covenant to pay them the transaction is not a mortgage, *Subhabhat v. Basudev Bhat*, 2 Bom. 113.

Money.—Includes produce of land. See also *Reference under Stamp Act*, 3 All. 788 (793).

Paddy.—Where a mortgage is executed by the mortgagors on receipt of a quantity of paddy from the mortgagee, held "a transaction of this class falls within the comprehensive definition of a mortgage contained in s. 58 (a) of the Transfer of Property Act", *Ramchand Sur v. Iswar Chandra Giri and ors.*, 48 Cal. 625 : 25 C.W.N. 57 : 32 C.L.J. 278 (283) F.B.

Sugar-cane.—Hypothecation of produce of a sugar-cane field is a mortgage. *In re Gujraj Singh*, 9 All. 585 : (1888) 7 All. W.N. 19.

Securing money advanced or to be advanced.—When in consideration of certain advances made by the Bank of Madras, an instrument was executed by the owner which purported to create a trust in favour of the bank in respect of the stock-in-trade, goods, chattels and effects and was as follows :—"The executant being desirous of carrying her deceased husband's business of which she is now the owner declares a trust in favour of the Bank of Madras in respect of machinery, plant, fixture and furniture and stock-in-trade in consideration of advances of moneys to be made by the bank from time to time not exceeding in all Rs. 4,50,000 for the purpose of financing the business. All such advances to carry interest at the rate of 6 per cent. per annum. The trustee was given full power to use, employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business, but should make good the property that may be sold with other goods of a similar nature and value ; any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs. 20,000 annually in trust to pay and apply the same in payment of such advances by the bank." It was held that as the main object of the instrument is to create in favour of the bank some security in respect of "specified property" for the sums advanced by the bank, it is liable to be stamped under Art. 40 of the Act and the document is not a Letter of Hypothecation within the exception of Art. 40. *The*

Secretary to the Commissioners of Salt, Abkari and Separate Revenue, Revenue Board, Madras v. Mrs. Orr, 38 Mad 646: 25 M.L.J. 613: 21 I.C. 476. If on construing a document, it is found that a transfer by way of assurance is contemplated, then it is a mortgage, *Varajlal Mulji v. Secretary of State for India*, 1931 A.I.R. 732 (Cal.).

Security.—An instrument whereby the Madras Electric Tramway Company (Limited) agreed with the Electric Construction Company that, in execution of the instrument, they will issue and hand to the Construction Company £8,000, part of the £250,000 second debentures, together with the £20,000, first debentures already issued to the latter company, and the remaining £5,000 first debentures, subject to the prior charges thereon, to be held by them as security for the sum of £32,009-15-10 previously mentioned in the deed, is a mortgage bond as by it the whole debt of £32,009-15-10 is secured upon not only the old security of £20,000 first debentures, but also the £8,000 second debentures and remaining £5,000 on the first debentures as handing over the debentures on the execution of the document is not an agreement and is, therefore, in effect an actual transfer, *Reference under Stamp Act*, 23 Mad. 207.

Usufructuary Mortgage.—When in consideration of loan received a party agrees that his property is to remain in the possession of the lender for a certain period and that after expiration of that time the amount advanced should be deemed to have been paid off, the transaction is a usufructuary mortgage and not a lease, *Ishan Chandra v. Sooja Bibee*, 15 W. R. 331: 7 B. L. R., A. C. 14. When an instrument was executed by a debtor giving the creditor possession of certain premises and stipulating that the loan is to be paid out of the rents and profits of the premises but the debtor will pay the revenue and other assessments, held that the instrument is a usufructuary mortgage, *Venkateshwara v. Kesavashetti*, 2 Mad. 187. An instrument though described as a lease, when executed in consideration of a certain amount and providing that the lender is to be in possession of the lands for a term and not providing for repayment of the amount is a usufructuary mortgage. *Reference under Stamp Act*, s. 46, 21 Mad. 358 F.B.

Deed of compromise as a mortgage deed.—When a *Solenama* (deed of compromise) was filed between certain purchasers of the interest of the judgment-debtor, who had filed an objection to attachment in execution proceedings and the decree-holder, by which the purchaser-objectors agreed to pay the decretal amount and hypothecated property as security for the due payment of the amount remaining due under the decree under execution, held by Spankie J., that the deed is a "mortgage deed" and is to be stamped as such *Surju Prasad v. Bhawani Sahai*, 2 All. 481 (485). See *Mashook Ameen Surzada v. Marew Reddy Venkata Reddy*, 8 M. H. C. R. 31. But see *Pitambar Gain v. Uddhab Mondal*, 12 C. W. N. 59, where it was held that such documents require no stamp as they contain merely a recital of a previous oral agreement.

By way of loan.—There must a debt to constitute a mortgage, *Vasudeo v. Bhan Lakhshman*, 21 Bom. 528.

Fresh advance—Where a fresh advance of money on the property already mortgaged by a fresh mortgage and an extension of time is made, the new instrument is a deed of mortgage and is to be stamped on the amount of the new loan. *Reference under Stamp Act*, 1 Bom. L.R. 7. See *Lallu Singh v. Ram Nandan*, 1930 A.L.J. 156 : 1930 A.I.R. 136 (All.) F.B. where fresh advances were made by later hypothecation bonds.

Enhanced rate of interest.—Where in consideration of the mortgagor promising to pay an enhanced rate of interest and in consideration of his recognising one of the several mortgagees to whose share, on partition, the mortgaged property has fallen as his only creditor, the present mortgagee agreed to extend the period of redemption, the instrument containing the stipulation to extend the period, is an agreement falling within Art. 5 (c) of Schedule I of the Stamp Act, and not an instrument of mortgage, *In the matter of Rameshwar Prasad*, 47 All. 310 : 86 I.C. 1027 : 1925 A.I.R. 501 (All.) F.B.

Creation of a right.—A bond for payment of money with a covenant not to alienate property specified in the Schedule is a mortgage, *Rajkumar Ramgopal Narayan Singha v. Ram Dutt Chowdhury*, 5 B.L.R. 264. Neither promise to pay out of debtor's property indefinitely, nor an indefinite order for the satisfaction of a decree out of the assets of a deceased person in whose hands they may be found, creates a charge and therefore the instrument is not a mortgage, *Bheri Dorayya v. Maddipati Ramayya*, 3 Mad. 55.

Trustees.—A "trust deed for securing mortgage debentures" for the purpose of securing money to be advanced by way of loan, and giving the trustees right to have the property vested in them to be held by them as trustees for the debenture holders and as security for the amount to be advanced on the debentures and giving them such rights of entry and of taking possession and management as mortgagors and trustees generally have, is a mortgage deed as the deed created rights in favour of trustees, *In Re Stamp Act*, 4 L.B.R. 2 F.B. See *Queen Empress v. Debendra Krishna Mitter*, 27 Cal. 587 : 4 C.W.N. 524. The instrument must create new obligations which the party agreeing is not already legally bound to discharge, *Damodar Gangadhar v. Vamunray Laksman*, 9 Bom. 435. The right can be created by an agreement to appropriate rents and profits in payment of the money advanced, *Khoosal Rae v. Jankee Dass*, 2 N.W.P. 9. The right can also be created by a compromise in a pending suit. *Mashook Ameen Suxdada v. Marcw Reddy*, 8 Mad. H. C. R. 31 : *Surja Prasad v. Bhowni Sahai*, 2 All. 481.

Specific property.—A covenant that the debtor would not alienate any property whatever is not a mortgage, *Chunder Kisore Surma v. Gour Churn Shah*, 1885 S.D.A. 253. A covenant not to alienate any property of the debtor until payment of the money advanced, is not a mortgage, *Gunoo Singh v. Latafut Hossain*, 3 Cal. 196 ; *Najibullah v. Nasir*, 7 Cal. 196 : 8 C.L.R. 454 ; *Bhupal v. Jagram*, 2 All. 449.

When after conveying specific description of property originally offered as security, the deed also included "all other (if any) *mouzas, mahals, villages, lands and shares of and interest in the additional security,*" it was held that a mortgage of all the properties have been created. *The Land Mortgage Bank of India v. Abul Kasim*, 26 Cal. 395 P.C.; *Gobind Chandra Pal v. Dwarka Nath Pal*, 35 Cal. 837. Where mortgagors were possessed of specified property a mortgage of the property by use of the words "our Zemindary property" without further description is sufficiently certain and the mortgage is not void for uncertainty. *Shadilal v. Thakur Das*, 12 All. 175. See also *Kanhia Lal v. Muhammad*, 5 All. 11; *Tribhowandas v. Krishnaram*, 18 Bom. 238; *Datto Dudheswar v. Vithu*, 20 Bom. 408 F.B.; *Balshet v. Dhond Ramkrishna*, 26 Bom. 33 (39). In *Varajlal Mulji v. Secretary of State for India*, 1931 A.I.R. 732 (Cal.) the Calcutta High Court held that if the lands could be ascertained with reasonable certainty *on reference to title deeds*, even if the particulars are not set out, then, the deed is a mortgage deed.

Not specified property.—The future surplus profits of a trade is not "specified property" within the definition given, *Reference under Stamp Act s. 46*, 7 Mad. 209. The words of a bond were as follows:—"Kamaruddi Sheikh engaged not to alienate the property of himself and his daughter for which he was about to sue or the rest of his own property, until the loan secured by the bond was paid of." These were held to be too indefinite and vague to create a charge, *Najibulla Mulla v. Nusir Mistri*, 7 Cal. 196 : 8 C.L.R. 454.; *Gunoo v. Latafat Hossain*, 3 Cal. 336 : 1 C.L.R. 91. See also *Dass Money Dassee v. Jonmenjoy Mullick*, 3 Cal. 363; *Khub Chand v. Kalia Das*, 1 All. 240 F.B.

By a mortgagor in favour of mortgagee.—When a note is entered in the account book of the mortgagee in the presence of witnesses, but it did not appear that the entry was made at the instance of or by the authority of the mortgagor, held it is not a mortgage deed, *Empress v. Maya Mal*, 31 P.R. 1883 (Cr.). In *Bhagwan Sahai v. Bhagwandin*, 17 I.A. 98 : 12 All. 387 at page 391 the Judicial Committee stated : "the rule of law on this subject is one dictated by common sense; that *prima facie* an absolute conveyance is to exist between the parties does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase" but in the case of *Hub Ali v. Wazir-un-nissa*, 3 C.L.J. 601 : 10 C.W.N. 778, the Judicial Committee construed a deed of sale as a deed of conditional sale apparently on the footing that the deed is a deed of mortgage.

Not a mortgage.—*Money in the hands of Government*—When a contractor agreed with the executive engineer to waive the prompt payment of a percentage of the sum to accrue due to him, and also agreed that Government may set off against it what sums it may be entitled to recover from him by reason of breach of contract, it is not a mortgage but an agreement for the property remains with the Government till the sum necessary to pay the amount retained is paid to the contractor, *Reference under Stamp Act, s. 46*, 7 Mad. 209. See also *Reference under Stamp Act, s. 46*, 11 Mad. 39.

A *muchalka* by an abkari licensee agreeing to deposit an amount equal to three months' rent as security for the due performance of the contract, is an agreement "not otherwise provided for" and not a mortgage. *Reference under Stamp Act*, s. 46, 15 Mad. 134.

Sale or Mortgage.—An instrument contained the postscript to the effect : "There is no rent for the house and no interest for the sum. You should not require account of rent and I shall not require interest for money. I shall recover and enjoy rent in lieu of interest. You should pay me Rs. 2000 as per term as loan without interest."; held the instrument was not a mortgage but an agreement to reconvey, *Vaman Trimbak Joshi v. Changi Damodar*, 49 Bom. 862 : 27 Bom. L.R. 1261 : 91 I.C. 360 : 1926 A.I.R. 97 (Bom.). See also *Gobardhn v. Raghubir Singh*, 1930 A.L.J. 799 : 124 I.C. 405 : 1930 A.I.R. 101 (All.) : 1930 I.R. 501 (All.) and *Ayyavayyar v. Rahimansa*, 14 Mad. 170.

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written :
 "Paper."

NOTES.

See s. 3 (14) of Act of 1879, S. 3 (21) of Act VIII of 1869.

"Includes."—See *Supra*.

(19) "policy of insurance"
 "Policy of Insurance." includes—

- (a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event ;
- (b) a life-policy, and any policy insuring any person against accident or sickness, and any other personal insurance.

NOTES.

See s. 3 (15) of Act I of 1879 and S. 3 (23) of Act XVIII of 1869.; s. 91 of the Stamp Act. 1891 (54 & 55 Vict. C. 39)

Amendment.—Sub-clause (c) and the word "and" prefixed thereto were repealed by s. 2 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

Includes.—See under s. 2 (1) *supra*.

Policy of Insurance.—Insurance is an agreement or contract of indemnity, whereby a person, who is termed the insurer or underwriter, in consideration of a specified sum, denominated a premium, undertakes to secure another who is called the assured, from certain risks or perils (*i.e.*, casualties) to which he is or may be exposed. This contract is termed a policy.—*Tomlins*. An Insurance need not be of human beings, but may be of cattles also against loss to the owner by their death, *Attorney General v. Cleobury*, 4 Ex. 65 : 18 L.J. Ex. 395. An entrance certificate granted under the Rules of the Uncovenanted Civil Service Family Pension Fund, authorizing the nominee of the person to whom the certificate is issued on consideration of a periodical payment and subject to certain contingencies and after his death, to draw a periodical amount, is a life policy. Such an instrument is not within s. 25 (c) of the Act of 1879. *Reference under Stamp Act, 1879, Sec. 46, 19 Cal. 499.*

Policy of "sea-insurance" or "sea-policy." (20) "policy of sea-insurance" or "sea-policy"—

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel ; and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk ; loss or damage, such agree-

ment or engagement shall be deemed to be a contract for sea-insurance :

NOTES.

See s. 3 (15) of Act I of 1879 and s. 92 of the Stamp Act, 1891 (54 & 55 vict c. 39).

Ship.—"Ship" shall include every description of vessel used in navigation not exclusively propelled by oars, *The General Clauses Act*, s. 3 (51).

Vessel.—"Vessel" shall include any ship or boat or any other description of vessel used in navigation, *The General Clauses Act*, s. 3 (56). The English Marine Insurance Act is 6 Edw. 7 C. 41 (1906).

Sea Insurance.—Or Marine Insurance is a contract by which the party assuring, in consideration of a certain sum of money payable according to contract stipulates to indemnify the assured, to the extent of the sum specified in the instrument, against losses incidental to marine adventures.

Sea Policy or Marine Policy.—The instrument embodying the contract is called Sea Policy or Marine Policy.

Under-writer.—The insurer is called the under-writer.

Premium.—The consideration of the Insurance is called the premium. Instruments relating to carriage of goods, not only by sea-going vessels but also by Inland navigation are sea policies.

When in consideration of increased payment, a company takes all risk in respect to the carriage of goods sent on a sea voyage, this fact does not render the deed liable to stamp duty as a sea policy. *Reference under the Stamp Act*, 1899, 30 Cal. 565.

An instrument, which is not a mere "Slip" or Memorandum of a proposed agreement, but mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, provides for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and guaranteeing payment in cases of loss and claims settled under it, is a policy of sea insurance, when it does not contemplate another document of a more formal character being passed to the assured. *In re : Marine Insurance Certificate*, 19 Bom. 130 F.B.

The defendant executed in favour of the plaintiff an instrument in respect of a cargo shipped from Muscat to Bombay to the following effect :—"We accept the risk with regard to goods which may be shipped at the wharf in the port of Muscat. The risk shall cease when, after the vessel has touched any port whatever, the goods shall have been landed at the wharf, in the port of Bombay. This insurance is accepted without damage in accordance with the usage of English policy. The period fixed with respect to loss, etc., is six months." The signature was duly affixed to the stamped

pucca policy. The instrument was not stamped. The boat and the cargo were lost. The plaintiff sued the defendant to recover the amount of insurance which he assessed at Rs. 7,500 less twenty per cent. discount; *held* (1) that the document in question was a Policy of Sea Insurance, within the meaning of Article 47 of the Indian Stamp Act, 1899, inasmuch as it definitely rendered the executant liable for money for the insurance of the goods shipped by a particular boat and fixed a definite period; (2) that it was, therefore, open to the plaintiff to pay the necessary stamp *plus* the prescribed penalty under s. 35 (a) of the Stamp Act and to ask the court to admit the instrument in evidence. *Tricamji Damji & Co. v. Virji*, 24 Bam. L.R. 820 : 67 Ind. Cas. 965.

(21) "power-of-attorney" includes any instrument
 "Power of attorney." (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it :

NOTES.

See s. 3 (16) of Act I of 1879 and S. 3 (24) of Act XVIII of 1869.

Powers of Attorney dealt with under this clause are those which are not chargeable under Art. 10, Schedule II of the Court Fees Act.

Power of attorney.—An instrument whereby a person is authorized to appear and do all acts on behalf of another relating to execution of a decree is a power of attorney, *Permanand v. Sat Prasad*, 33 All. 487 : 8 A.L.J. 378 : 9 Ind. C. 617 F.B. An instrument which authorizes a person to do all things and take all steps necessary to complete the execution of a decree, is a general power of attorney. *Venkataramana Iyer v. Narasinga Rao*, 38 Mad. 134 : 24 M.L.J. 180 : 1913 M.W.N. 72 : 18 Ind. 135.

An instrument executed by a number of *mirasdars* in favour of another, authorising him to recover *Swatantrams* and other communal income and other income for them from their former agent and to divide the income between them is a Power of attorney and is to be stamped as such. *Reference under the Stamp Act*, s 64, 15 Mad. 386 F.B. An authority given in writing to a *gomosta* to collect rent is a power of attorney. *Raghu Nundun v. Ram Chunder*, 10 W.R. 39 : 11 B.L.R. 55 F.B.

The Court Fees Act, is the excluding Act while the Stamp Act applies to any document not excluded from its provisions by the Court Fees Act. Chapter X of the Presidency Small Cause Courts Act (Act XV of 1882) deals with fees and costs and s. 77 of the last chapter, has the application of ss. 3—5 and 25 of the Court Fees Act.

Sec. 3 of the Court Fees Act provides for the levy of fees in Presidency Small Cause Courts. S. 5 provides for the procedure in case

of difference as to necessity or the amount of fees in such court and s. 25 provides that all fees referred to in s. 3 as chargeable under the Act shall be collected by stamps.

The rules relating to fees payable in Presidency Small Cause Courts are, therefore, not exclusively those embodied in the Court Fees Act, and the inclusion in Article 48 of Sch. I of the Stamp Act of power of attorney required in suits or proceedings under the Presidedcy Small Cause Courts Act does not indicate that a power of attorney in favour of a person who is not legal practitioner for the conduct of a case in an ordinary civil court comes within the definition of s. 2 (21) of the Stamp Act. The indication is in the opposite direction. *Ganpat v. Prem Singh*, 202 P.L.R. 1912 : 15 Ind. Cas. 122.

A letter empowering a person to sell the land is not a power of attorney as defined in the Stamp Act unless it empowers him to sell the land in the name of the writer of the letter. *Kala Khan alias Kalu v. Nathu Khan*, 92 I.C. 990 : 1926 A.I.R. 229 (Lah.) : 27 P.L.R. 78. See other cases under Art. 48, infra.

Not a power of attorney.—An instrument of authority to a person to receive certain money and sign a receipt but not in the name of the person executing the instrument, is not a power of attorney, *Tribhawan v. Pandurung*, 3 Bom. L.R. 697.

Computation of Stamp duty.—The definition of a power of attorney in Section 2, sub-section (21) of the Act and the classification of such powers in the Articles makes it clear that in computing the stamp duty payable on a power of attorney the Legislature takes no account of the number of persons executing the power. It is the number of agents appointed and the powers of such agents which determines the amount of Stamp duty. *Jogi Ram v. Mohammad Rafi*, 80 I.C. 467 : 1925 A.I.R. (Oudh) 132.

(22) “promissory note” means a promissory note as defined by the Negotiable Instruments Act, 1881 ;

“Promissory note.”

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen :

NOTES.

This section is new. See s. 33 of the Stamp Act, 1891 (54 & 55 vict. C. 39).

Means—See cases under s. 2 (2) *supra*.

Includes—See cases under s. 2 (1) *supra*.

Promissory Note.—In the Stamp Act the definition of a Promissory Note as given in the Negotiable Instruments Act is adopted and instruments not covered by that definition are also included. The definition in the Negotiable Instruments Act is as follows:—“S. 4. A promissory note is an instrument in writing not (being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.” According to this definition an instrument to be a promissory note must not contain vague terms and must

- (a) be signed by a *certain person*, i.e., the maker;
- (b) be in favour of a *certain person or to bearer* of the instrument;
- (c) the amount of money must be *certain*; and
- (d) contain a promise to pay;
- (e) the promise to pay must be unconditional.

Since the amendment of s. 13 of the Negotiable Instruments Act, 1881 by Act VIII of 1919, the promissory note may be to bearer or to order. It should not be made payable to bearer on demand as in that case the note will be void under the provisions of the Paper Currency Act, 1923 (Act X of 1923).

Test.—*Mercantile usage.* Neither in England nor in India is the definition of a pro-note limited to an instrument that is negotiable according to mercantile usage. The definition of a pro-note in section 4 includes instruments that are not negotiable unless it is expressed in the form prescribed in s. 13 (of the Negotiable Instruments Act). It follows, therefore, that an instrument may be a pro-note although it would not pass current as such among merchants and the *test* is not the mercantile usage, but the terms of the statutory definition, *Ramsing v. Parumal and another*, 9 S. L. R. 150: 32 I. C. 582.

A creditor cannot have two independent causes of action on the same promissory note, *Children Thankammal v. Daughter Kunhamma*, 37 M.L.J. 369: 53 I.C. 878.

The object of a promissory note is to show that the particular transaction represented by the promissory note, is a separate transaction. *Issur Singh v. G. Bergmann*, 30 Cal. 627; *Kishomal Kirpomal v. Vishindas Sukhramdas*, 9 I.C. 299 (Sind).

A promissory note does not lose its character as a promissory note by the fact that title deeds were deposited as a collateral security, when there is nothing to show that the pledge is the primary transaction and the promissory note only a further security. *Ram Chandra Row v. Seshia Aiyangar*, 3 M.L.J. 225. See also *Vadamalai Pillai v. Subramania Chettiar*, 1923 M.W.N. 57 (62).

Terms vague.—Where a note was to the effect:—I, I.N.E., do hereby promise to pay at Allahabad to the Manager of the Agra

Savings Bank, Limited, the sum of Rs. 10 on or before the 25th day of October, 1876, and a similar sum monthly every succeeding month, for full value and consideration; dated the 9th September, 1876. The Allahabad High Court held that the terms are too vague and indefinite and that the note can not be regarded as a promissory note. *Carter v. The Agra Savings Bank, Limited*, 5 All. 562. See also *Tirupathi Goundan v. Rama Reddi*, 21 Mad. 49.

Isolated slips of paper.—Where the real transaction was a contract to supply bricks isolated slips of paper signed by the defendant that he has received so many bricks through a person, is not a pro-note. *Lehna Singh v. Ahmad Din*, 20 I.C. 436.

Certain person.—The words “a certain person” mean a person who is capable of being ascertained at the time when the promissory note is made. *Yeo Eng Pwa v. Chetty Firm of R.M.A.R.R.M.*, 5 L.B.R. 162 : 4 Ind. Cas. 293.

An entry in the book of the creditor by a debtor with a stipulation that the amount borrowed would be paid off by a certain date, is not a promissory note unless the entry made it clear to whom the payment would be made. *Emperor v. Kullumal*, 1903 A.W.N. 174; *Thackersay v. Tirshendoss*, 1925 A.I.R. 9 (Sind) : 76 I.C. 282. An instrument which is a promissory note in all other respects as defined in the Negotiable Instruments Act, but which makes the amount payable not to a person or his bearer, but is payable to the creditors, i.e. the members for the time being of the Firm of R.M.A.R.R.M. who are not ascertainable at the date of execution and therefore not a certain person, is not a promissory note. *Yeo Eng Pwa and others v. Chetty Firm of R. M. A. R. R. M.*, 5 L.B.R. 162 : 4 I.C. 293 F.B.

Joint Promissors.—The consideration paid to any of the joint promissors, is legally sufficient to support the promise of all the joint promissors. *Sarnalinga Mudali v. Pachai Naicken alias Pachaiyappa Naicken*, 38 Mad. 680; See *Bangarsami Aiyangar v. A. R. A. A. R. S. Somasundaram Chettiar*, 27 M.L.J. 176.

When in promissory note it was intended that the two defendants were intended to be jointly liable for the plaint debt and it was found that the signature of one of them is a forgery, the promissory note is void and nothing can be recovered against the executant who signed it, *Amirkhan Pillai v. Naujah Goundan*, 26 M.L.J. 257. If a document is drawn up in the names of several persons and it was the intention of the parties that all of them should execute it, the documents are not complete until all of them have done so. This is a question of fact what was the intention of the parties. *Nethiri Menon v. Gopalan Nair*, 39 Mad. 597 : 29 M.L.J. 291 : 1915 M.W.N. 586 : 2 L.W. 714 : 30 I.C. 713 : 18 M.L.J. 220.

The question whether a person can execute a promissory note or any other negotiable instrument in favour of a community arose in, *Budavaram v. Noota Ibbundrum*, 44 M.L.J. 240, but was not decided although it was held that a contract to pay money to a community may be enforceable.

Pay to or to the order of a certain person.—Under s. 13 (2) of the Negotiable Instruments Act (Act XXVI of 1881) “a negotiable instrument may be payable to two or more persons jointly or it may be made payable in the alternative to one of two or one of several payees.” S. 13 of the Negotiable Instruments Act has been amended by Act 8 of 1919 whereby a promissory note remains a promissory note although the words “to order or bearer” do not occur. See in this connection the observations of the Calcutta High Court in *Khetra Mohan Shaha v. Jamini Kanta Dewan*, 54 Cal. 445 (448, 449) : 100 I.C. 630 : 1927 A.I.R. 472 (Cal.).

An instrument executed in the following terms : “This document a handnote, is executed by me for the purpose of purchasing a *ghor*, I take from you Rs. 7. I will pay interest on the sum at half *anna* per rupee per mensem. Having received this sum this document is executed.” It was held that this document is neither a bond nor a promissory note but an agreement to pay. *Murari Mohun Ray v. Khetthur Nath Mullick*, 15 Cal. 150 ; *Ferrier v. Ram Kulpa Ghose*, 23 W.R. 403.

An instrument to the effect, “I, N. having hereby taken on this date from your *tahbil* at B the sum of Rupees. do promise and bind myself in writing that I will pay interest on the above amount at the rate of 1 per cent per month up to the date of realization. I will repay the said amount with interest on demand on your behalf. I hold myself liable for the said amount,” was held not to be a promissory note within the meaning of s. 4 of the Negotiable Instruments Act as there was no covenant that the money should be paid to the plaintiff or his order and also as there was no evidence that the document was negotiable by virtue of any custom or usage in B. *Satiya Priya Ghosal v. Gobinda Mohan Ray Chowdhury*, 14 C.W.N. 414 : 11 C.L.J. 236.

An entry was made in the plaintiff's *khata* book to this effect, “The account of Gola Gopal Daya of the village Panar for the year 1933 Balance of the previous account Rs. 316-4-0. This money shall be given whenever you shall demand it. Sd. Gopal Daya and signed by a witness.” This entry was held not to be a promissory note, although it was signed by the maker and an one anna stamp was affixed to it and contained an express and unconditional promise to pay as the name of the payee was not apparent on the face of it, but is a bond as it was attested by a witness and not payable to bearer or order, *Lala Jethaji v. Bhaga Gopal*, 3 Bom. L.R. 699 ; *Chandra Prasad v. Varjajal*, 8 Bom. L.R. 644, where the stamp of one anna was considered sufficient, but see *Kanhaiya Lal v. Domingo and another*, 1 All. 732, where the pro-note was not payable to bearer.

Promissory note payable to bearer on demand.—A promissory note payable to bearer on demand is illegal and void and the bearer cannot recover any amount under the deed as s. 25 of the Paper Currency Act is a bar. *Chidambaram Chetty v. Ayyaswami Thevar*, 40 Mad. 585 : 31 M.L.J. 401 : (1916) M.W.N. 210 : 4 L.W. 261 : 20 M.L.T. 350 : 36 I.C. 741. See also *Nachimulhu Chetty v. Andiappa*

Pallai, 1917 M.W.N. 778 : 6 L.W. 630 : 42 I.C. 706 ; *Jethaparkha v. Ram Chandra Vittroba*, 16 Bom. 689. A promissory note payable on demand to bearer is a void instrument under s. 25 of the Paper Currency Act (X of 1923) and the mere mention of a name on the instrument does not make the section inapplicable. *H. V. Low and Company v. Sudhanna Kumar Chakravarti*, 58 Cal. 1453 : 35 C.W.N. 587 : 1931 A.I.R. 791 (Cal.). In this case the form of the promissory note was—on demand I promise to pay A or bearer.

The amount of money must be certain.—To constitute a promissory note, the promise must be to pay a sum certain and nothing else. *Follett v. Moore*, 4 Ex. 410. An instrument containing an absolute promise to pay a specified sum on a given date, is a promissory note, *Bansidhar v. Bu Ali Khan*, 3 All. 260 F.B. ; *Balbhadar Prasad v. The Maharaja of Petiah*, 9 All. 351 ; *Hutuman Sahib v. Husain Sahib*, 1 M.H.C.R. 152 ; *Reference under the Stamp Act* s. 60, 4 Bom. L.R. 912. But if the amount of the note can be ascertained without admitting other evidence, then the omission does not vitiate the note, *Maung Po Ye v. Ye Chein Hug*, 1 Bur. L.J. 172. An instrument in the following terms :—“Bansidhar writes this *rukha* in favour of *Bu Ali Khan* for Rs. 50, cash received, to be repaid on the 13th November, 1878; in the event of default, he shall pay interest at one rupee per diem,” was held to be a promissory note as it is a promise to pay a specified sum and the promise to pay interest is in the nature of penalty, *Bansidhar v. Bu Ali Khan*, 3 All. 260 (263).

The amount payable should be money only.—An instrument containing a promise to pay money and a certain quantity of paddy, is not a promissory note. *Muthu Chetti v. Muttan Chetti*, 4 Mad. 296 F.B. An instrument containing an agreement to deliver certain quantity of grain on demand is not a promissory note. The Chief Court said : “The instrument was not a promissory note as defined in s. 2 (22) inasmuch as in a promissory note there must be an undertaking to pay a definite sum of money, and, unlike a bond does not include an undertaking to deliver grain.” *Abhairaj Koer v. Dala Din*, 73 I.C. 465 : 1924 A.I.R. 106 (Oudh) ; See also another case between the same parties, in 80 I.C. 459 : 26 O.C. 383.

Promise to pay.—Under the old act of 1869 the promise to pay must be of money only, hence an instrument containing a promise to pay money and grain was held not to be a promissory note, *Muthi Chetti v. Muttan Chetti*, 4 Mad. 296.

Should be of the whole amount.—An instrument the executant of which, agrees to make specified payment by instalment towards its discharge and further agrees that in the event of his failure to do so it shall render him liable to forfeit any payments already made and also to return a boat bought, is not a promissory note payable otherwise than on demand, but only agreement requiring 8 annas stamp, *Katchi Rowther v. Naina Mohamed*, 8 L.B.R. 155 : 28 I.C. 300.

Promise must be express.—A document is not a promissory note unless it contains an express promise to pay. An implied promise is not sufficient to constitute an instrument a promissory note. *Govind*

Gopal v. Balwantrao Hari, 22 Bom. 986; *Nandan Misser v. Musst. Chitturbuthy*, 13 B.L.R. App. 38; *Ram Singh v. Parumal*, 9 S.L.R. 150 : 32 Ind. Cas. 582. A chit whereby promise is made to repay may be a pro-note when the transaction falls within the definition of a pro-note as given in the Stamp Act, *Chokalingam v. Annomalai Chelty*, 34 I.C. 417.

Implied promise to pay.—The words “I am liable to pay” do not in fact mean anything more than “I am bound to pay” and do not constitute an undertaking to pay. *Tiru Pathi Gounden v. Rama Reddi*, 21 Mad. 492 : 1 M.L.J. 291. See also *Udit Upadhyaya v. Bhawani Din*, 27 All. 84; *Pratap Chand v. Purshotamdas*, 18 Bom. L.R. 124 : 33 I.C. 366, where an instrument was held to be a promissory note although there was no express undertaking to pay. See also *Reference Under Stamp Act*, 4 Bom. L.R. 912 (914).

An instrument began with saying that it is a promissory note. The executant stated that he agreed on the date of the promissory note to pay the amount of Rs. 600 found due on demand. It was held by the High Court that “it is impossible to hold that such an instrument can be read otherwise than as a promissory note. It is no doubt true that the question whether an instrument is a promissory note or not should be judged by the words used, and that the instrument must contain in words an unconditional undertaking to pay a sum of money, and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a test. We have no hesitation in saying that the executant unconditionally promised by it to pay the amount of Rs. 600 to the appellant’s transferor, *Karuthappa Routtran v. Bava Moideen Sahib*, 36 Mad. 370.

Promise to pay must be unconditional.—Where the promise to pay does not depend on any condition and was absolute, the instrument is a promissory note. *Nasiban v. Preosunkar*, 8 Cal. 534 (536).

An unconditional promise to pay in writing a certain sum of money by a certain date, is a promissory note. *Manick Chand v. Jomoon Dass*, 8 Cal. 645.

But where the undertaking to pay money is not unconditional the instrument is not a promissory note. *Bharata Pisharodi v. Vasudevan Nambudri*, 27 Mad. 1 : 14 M.L.J. 65 F.B. See also *Narayansami v. Lokambalammal*, 23 Mad. 156, footnote.

An acknowledgment whereby a promise is made to repay the principal with interest, is a promissory note. *Mathur Bhai v. Dalpat*, 3 Bom. L.R. 839; *Mathu Sastrigal v. Biswanatha Pandara Sannadhi*, 26 M.L.J. 19 : 1914 M.W.N. 58 : 14 M.L.T. 520 : 38 Mad. 660, where the instrument was to the effect: “Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks’ time return this sum of Rs. 350 with interest thereon at the rate of Rupee 1 p. c. p. m. and get back this letter” and this was held to be a promissory note as it contained an unconditional promise to pay the sum borrowed and not merely an offer to borrow or an acknowledgment of indebtedness.

An instrument embodying a statement by the drawer that the drawer undertakes to pay a specified sum to the plaintiff or his order "*maarfai*" is an unconditional promise to pay, and is a promissory note. *Melaram v. Brij Lal*, 148 P. R. 1919 : 54 I. C. 76.

A document not containing an unconditional undertaking to pay a certain sum of money but containing a request to borrow money, is not a promissory note. *Dhondbhat Narharbhat v. Atmaram Moreshwar*, 13 Bom. 669.

Request for a loan.—Where a letter was sent by a bearer asking for a loan of specific sum of money and stipulating for payment of the money with interest and return of the latter, *held* that the letter is a promissory note and not a proposal of a loan. *Channamma v. Ayyanna*, 16 Mad. 283.

Collateral agreements.—"If a man signs a promissory note payable on demand, it appears to me that the note ought to be stamped as a note payable on demand, although there may be a collateral agreement between the parties that the holder of the note will not present it for a given time; or, if paid on demand that the maker of the note shall be entitled to a certain amount of discount to be deducted." Peacock C. J. in *Chandrakanto Mookerjee v. Kartick Charan Chauli*, 5 B.L.R. 103 (105). See also *Nundun Misser v. Chitturbuttee*, 21 W.R. 446 : 13 B.L.R. App. 38.

A promissory note of value less Rs. 200 payable otherwise than on demand, but not more than one year after date and requiring a stamp of two annas was held to be duly stamped when written on an impressed stamp of two annas, notwithstanding that it bore the word hundi, *Radha Bai v. Nathu Ram*, 13 All. 66 : 1890 All. W. N. 258.

A promissory note does not lose its character as a promissory note merely because the payment is to be made at a certain place, *Deva Ratna v. Fakir Adam*, 4 Bom. L.R. 428, or if it contains an agreement to waive all question as to jurisdiction of court, *Rakhalidas Singhee v. Raj Chander Dutt*, 1 Ind. Jur. 124.

An instrument written upon a stamp paper valued at 8 annas ran as follows:—"We have this day received from you Rs. 25,000 in cash. Interest thereon has been fixed at the rate of annas 12 per cent. per mensem. The said interest is to be paid every month as it accrues due, and the period fixed in respect of the above written amount is three years." The defendant contended that the instrument is insufficiently stamped; *held* that the instrument was not a promissory note nor did it fall under the prohibition of s. 35 as the instrument contained a term for the payment of monthly interest. Ordinarily when a person acknowledges the receipt of a certain sum for a certain term on a certain date, there can be no reasonable doubt but that what he means is that at the expiration of that term he is willing to pay the money on demand. *Protapchand Gulabchand v. Purshotam Das Malji*, 18 Bom. L.R. 124 : 33 I.C. 866. See also *Nathoobhai Dullabhai Seth v. Himatlal Vastachand Dulul*, 23

Bom. L.R. 1231, where the agreement was that the amount is payable at convenience.

A note recites—R. owes certain amount to P. and as the amount cannot be paid immediately this pro-note payable 'on demand' is executed and it is agreed that interest at 12 p. c. per annum is payable. A dispute having been raised, the High Court held that the document could not be considered as a promissory note by which it is called but is an acknowledgment coupled with an agreement to pay interest, therefore, an agreement. It is not a promissory note as it does not contain an unconditional undertaking to pay a certain sum of money, the mere fact that any person chooses to give a certain title to a document by no means makes it that document. *Ratan Singh v. Pirbhu Dayal*, 1931 A. L. J. 230 : 131 I. C. 135 : 1931 A. I. R. 302 (All.).

Not a promissory note but a bond.—Where an instrument, attested by two witnesses, and stamped with an adhesive stamp of one anna stamp was as follows :—

Promissory note executed on 30th September 1903 by M.C., I promise to pay you or your heirs, on demand, the sum of Rs. 40 the amount I borrowed from you this day, with interest at one per cent per annum on the said amount. *Held* that the instrument was a bond and not a promissory note and it cannot be admitted in evidence on payment of penalty and a stamp only under s. 35 (a). *Kasaram Rangiah v. Mallah Chengama Naidu*, 33 M.L.J. 603 : 43 I.C. 55. See also *Venku v. Sitaram*, 29 Bom. 82 : 6 Bom. L.R. 841.

Contra.—A document purporting to be a promissory note but stamped with a stamp of one anna and attested by two witnesses is not a bond but a promissory note. *Reference under the Stamp Act* s. 46, 8 Mad. 87 F.B.

Not a bond but a promissory note.

An instrument to the effect :—"Rs. 37 which remains due to be paid, to Gurditta according to their receipt, thirty-seven rupees to be paid in 2 or 3 days. To be paid by Dhanna Singh, Bazaz, 10th Poh Sambat 1954—written by Das Mal Wadhawa, at the dictation of Dhanna Singh, stamp affixed—signed by Dhanna Singh with his own pen," is a *promissory* note and not a bond. *Gurditta Mal v. Dhanna Singh*, 3 P.L.R. 1902 : 14 P.R. 1902 F.B.

Not a promissory note but an agreement.—*Promise to pay principal with interest.*—A letter requesting a loan and promising to repay the same with interest by a certain date is a proposal within the meaning of s. 4 of the Contract Act and is not a promissory note, hence does not require to be stamped. *Sayad Shikander Shah v. Firm Bhai Ram Chand Sant Ram Kohat*, 71 Ind. Cas. 968 (Peshawar). See also *Ratan Singh v. Pirbhu Dayal*, 1931 A.L.J. 230 : 131 I.C. 135 : 1931 A.I.R. 302 (All.).

Promise to pay interest.—A document showing liability to pay interest as it accrues due is not a promissory note and is admissible

upon payment of penalty, *Joti Pershad v. Brij Rai Sharan*, 52 P.L.R. 1922 : 68 Ind. Cas. 461 : 5 L.L.J. 148 : 1923 A.I.R. 29 (Lah.).

Letter requesting a loan.—A letter containing words “in addition to Rs. 115 already received Rs. 385 is also required. Please send it by the bearer Sreenivasan, alias Appu, taking his acknowledgment below. The amount will be returned with interest at 12 per cent.” Held that the undertaking being conditional on the amount being remitted as requested, the instrument (letter) is not a promissory note. *Bharat Pisharodi v. Vasudevan Namoudri*, 27 Mad. 1 : 14 M.L.J. 65 F. B; *Channamma v. Ayyanna*, 16 Mad. 283, where it was held to be a promissory note.

A letter written to the effect—“you will send Rs. 200 through Souriraja Mudaliar. I will send these two hundred rupees with interest according to mera rate at Rs. 2-1-4 per cent per mensem, and have it credited in this letter on cadjan, and get it back, should there be delay in your sending, the bandy will return in vain. You will have to send without delay” and was signed by the defendant's deceased husband. The 1st court dismissed the suit on the ground that it is an unstamped promissory note. The High Court held : “The letter does not amount to a promise and no obligation would have arisen unless the addressee had consented to comply with the request and lend the money. Acceptance on plaintiff's part of the offer made in the letter was necessary before any obligation could be said to arise, whereas if the letter was equivalent to a promissory note, it would follow that on mere proof of the writing and signature, the plaintiff would have been entitled to recover,” and held that the letter was not a promissory note, *Narayanasami Mudaliar v. Lokambalammal*, 23 Mad. 156 (N.) : 7 M.L.J. 220; *Queen-Empress v. Somasundaram Chetti*, 23 Mad. 155; *Dhondbhat Narharbhat v. Atmaram*, 13 Bom. 669. See also *Sayad Sikandar Shah v. Tiru Bhai Ramchand etc.*, 71 I.C. 938, where it was held that a letter requesting a loan is not a promissory note, although there may be a promise to repay with interest.

I. O. U. Notes.—An I. O. U. memorandum signed by the party liable, is exempt from stamp duty as it is an evidence of debt. See illustration (c) to Sec. 4 of the Negotiable Instruments Act. This is also the law in England. See *Cory v. Davis* 1863 C.B.N.S. 370 : 143 E.R. 489; *Melanoth v. Teasdale*, 13 M. & W. 216. But addition of any other matter may render an I. O. U. note liable to stamp duty as an acknowledgment. But if a date for payment is fixed and a promise to pay be made in the deed for payment then it becomes a promissory note under the English Law. *Brooks v. Elkins*, (1836) 2 M. & W. 74 : 150 E. R. 675. An I. O. U. is not a promissory note. See sec. 4, Illustration (c) of the Negotiable Instruments Act. A security is anything that makes the money more assured in its payment or more readily recoverable as distinguished from a mere I. O. U. which is only evidence of a debt. A promissory note is not a mere I. O. U. which is only evidence of a debt, but is something more. It contains a promise to pay the amount on demand to the person specified in the note or his order and renders the note transferable by endorsement. *Chetumal Bulchand v. Noorbhoy Jafferji*, 1928 A.I.R. 89 (Sind) : 107 I.C. 213.

“Receipt.” (23) “receipt” includes any note, memorandum or writing—

- (a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person.

NOTES.

See s. 3 (17) of Act I of 1879; Sch. II, Art. 7 of Act XVIII of 1869.

Change in the law.—The word “includes” has been substituted for the word “means” in Act I of 1879 and the words “or advertisement” have been omitted in this act. The word “and” at the end of this clause was omitted by the Repealing and Amending Act, 1928 (Act XVIII of 1928).

Includes—See cases under s. 2 (1) *supra*.

The expression ‘receipt’ includes

- (i) an acknowledgment of having received, any money, cheque, bill of exchange or promissory note, or having received any movable property *in satisfaction of a debt* or whereby a debt or demand or any part of it is *satisfied* or which signifies or imports any such acknowledgment, and
- (ii) it need not be signed with the name of any person, and
- (iii) a note, memorandum or writing purporting to be between a debtor and a creditor.

No particular form of expression is necessary.—A writing containing an acknowledgment of money being received is legal evidence as a receipt if a receipt stamp is affixed to it notwithstanding the fact that something else (i.e. an agreement) is inscribed in it. *Grey v. Smith*, 1 Camp. 387.

It is not necessary to have a receipt given in any specific terms; it is sufficient if it purports to be a discharge, and is intended to operate as such. Any form of words which, if duly stamped would operate as a receipt, is to be considered liable to duty. Therefore, where the word 'settled' was written upon a bill presented for payment, it was held that it requires to be stamped as a receipt. *Spauforth v. Alexander*, 2 Esp. 621. In *R. v. Boardman*, 2 Moody & Robinson 147 a signature without words was held sufficient.

M. a landlord was indebted to J. the tenant and the debt was secured by mortgage. Subsequently M. executed an instrument in favour of J. to the effect, "Mr. Jones having written off the sum of £72-3s-9d. from his mortgage debt, being five quarters' rent of the house occupied by him, I hereby discharge the same rent to the 24th day of July 1841," and the same was held to be a receipt and to bear a stamp as a receipt. *Lucas v. Jones*, 5 Q.B. 949 : 13 L.J. Q.B. 208.

Acknowledged.—To constitute a receipt there must be an acknowledgment either express or signified or imported, of the receipt and not a mere statement that the money was received, *In re Jamnadas Harinarain*, 23 Bom. 54.

The acknowledgment must be between debtor and creditor.—The meaning of the terms "acknowledged" and "acknowledgment" used in S. 2 sub-section 23 of the Stamp Act must be limited to documents given to or issued for the benefit of the debtor, acknowledging to him the payment of money, &c., or delivery of goods, in discharge or satisfaction of his debt or demand upon him.

Every acknowledgment is not to be charged with duty, for example, a letter written by one friend to another that he received payment from a 3rd person is not to be charged with duty. A certificate that a premium on an assurance policy has been paid or issued for the purpose of supporting a claim for exemption from income-tax and not for the purpose of being used as evidence between the Insurance Company and the policy holder, is exempt from duty, as it is not a receipt. *Reference*, 2 L.B.R. 307.

The parties.—Before an acknowledgment of having received money can be chargeable with stamp duty as a receipt, the relation of debtor and creditor must be found to exist. *In the matter of Burn & Co.*, 37 Cal. 634 : 14 C.W.N. 833 : 6 I.C. 778.

Therefore an acknowledgment by a 3rd party is not a receipt, *In re Jamnadas Harinarain*, 23 Bom. 54. See also *In the matter of Act XVIII of 1860 etc.* 4 Cal. 829 : 3 C.L.R. 597 where a bank informed a customer of having received money from a 3rd party.

A writing to the effect: "May 6th 1836—Mr. Huxley has advanced me 12 £ furniture etc. delivered to him at stratford. 'T. O' Connor."—does not require a stamp as on a receipt as it merely acknowledges that money has been advanced on a pledge of furniture. *Huxley v. O'Connor*, 8 Car. and P. 204 : 173 E.R. 461.

Entries in Book.—A creditor who does not stamp each item of acknowledgment with a stamp of one anna commits a breach of s. 62 of the Stamp Act as each acknowledgment is a receipt within the meaning of s. 2 (23) of the Stamp Act, *Emperor v. Tulshi Ram*, 35 All. 296 : 11 All. L.J. 309 : 20 I.C. 216.

Creditor's acknowledgment in the debtor's book.—An entry made by a creditor in the Khatta book of the debtor recording payment of his debt is a receipt, *Queen Empress v. Juggernath*, 11 Cal. 267; *Jhaver v. Bonumyia*, 1887 P.J. 41. A mere signature in an account book signifying payment of money is a receipt, *Reg v. Overton*, 23 L. J. M. C. 29.

The acknowledgment must be in satisfaction of a debt.—An acknowledgment in a letter of any amount over Rs. 20 requires a stamp, *Queen Empress v. Multi Rulandi*, 11 Mad. 329, *Reference under Stamp Act*, 8 Mad. 11. An acknowledgment by a secretary of a club to a member for money received is a receipt, *Reference under Stamp Act*, s. 46, 10 Mad. 85.

An instrument which on the face of it purported to be a "received payment" and was signed by the creditors, is a bill or account of goods supplied, and is a receipt and is to be chargeable as such. *In the matter of a Reference from the Financial Commissioner*, 1 L.B.R. 281. A receipt granted on behalf of a Municipalbody in acknowledgment of having received the municipal rates and exceeding Rs. 20- in amount, requires a stamp. *In re Karachi Municipality*, 12 Bom. 103.

An acknowledgment granted by the debtor in favour of his creditor, of having received the ornaments pledged with the creditor for the purpose of selling them and paying the proceeds to the creditor, is not a receipt as the acknowledgment was not in satisfaction of a debt. 1887 Bom. P.J. 46. See clause (3).

The note must purport to be between debtor and creditor.—A Sarkhat or document signed by a creditor, acknowledging receipt of sugarcane juice of value of over Rs. 20, but without anything to show that it was received as part payment of a bond, is not a receipt but only a memorandum showing the quantity of sugarcane juice supplied. *Debi Prosad v. Ruppa*, 6 All. 253 : 1884 All. W.N. 72.

An information by a bank to a customer that money had been received from another and had been credited to that customer's account, is not a "receipt" and need not be stamped as such. *In the matter of Act XVIII of 1860 &c.*, 4 Cal. 829 : 3 C.L.R. 597.

A statement by a third party that a certain sum of money has been received by the lender is not a receipt as there must be an acknowledgment express or implied. *In re Jamnadas Harinarain*, 23 Bom. 54.

A certificate granted by an Insurance Company to the effect that the premium had been paid in order that the holder of the certificate may get exemption from Income Tax, is not a receipt, as the certificate is not issued to a debtor acknowledging any payment of money

in satisfaction of a debt. *Reference by the Financial Commissioner, Burma*, 2 L.B.R. 307. See also *Emperor v. Tulsi Ram*, 35 All. 296 : 11 A.L.J. 309 : 20 I.C. 216 ; *Queen-Empress v. Juggernath*, 11 Cal. 267 ; *Jhaver v. Bomunija*, 1867 P.J. 41.

Payments amongst co-servants.—Where a cashier of a firm made over money to an assistant for payment to a creditor of the firm and that assistant gave a chit to the cashier showing that payment had been made by the cashier to that assistant, it was held that such a chit is not a receipt and need not be stamped, *In the matter of Messrs. Burn & Co.*, 37 Cal. 634 : 14 C.W.N. 833 : 6 Ind. Cas. 778. See also *Shadi Lal v. Emperor*, 4 O.L.J. 490 : 42 Ind. Cas. 328.

Subsequent stamping of a receipt.—A receipts stamped not at the time of execution but subsequently is not duly stamped and therefore is not admissible in evidence. *Jethibai v. Ramchandra*, 13 Bom. 484.

(24) “settlement” means any non-testamentary disposition, in writing, of moveable or
 “Settlement.” immoveable property made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those or whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition [and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition] ; [and

NOTES.

See s. 3 (19) of Act I of 1879 ; S. 3 (32) of Act XVIII of 1869. The expression ‘settlement’ is not defined in the English Stamp Act.

Amendment.—The words within brackets were added by s. 2 of the Indian Stamp (Amendment) Act, (15 of 1904).

The elements are :—a non-testamentary disposition of property in writing

(a) in consideration of marriage,

- (b) for distribution of property amongst either family or those for whom the settlor desires to provide and includes his dependants, or,
- (c) for religious or charitable purpose.

Non-testamentary disposition.—A settlement is a non-testamentary disposition in writing of property for the purpose of providing those for whom the settlor desires to make a provision, *Bai Lukhi v. Amaldas*, 1837 P.J. 243.

For distribution of property.—The definition of the term “settlement” in the Stamp Act suggests the creation of separate interests in favour of several persons who may have any legal or moral claim on the settlor or for whom he may desire to make a provision.

When a person bestows on his sister and her son, land on account of natural affection it is a gift and not a settlement, *Reference under Stamp Act*, 7 Mad. 349 ; *In re Subedar Husseinsha Khan*, 1882 P.J. 247.

[The words “or for the purpose of providing some person dependent on him” in cl. (b) having been added, the above provisions would now come under this definition of a settlement. (See the speech of Sir James Westland on 20th Jan. 1899 in the Council)].

An instrument whereby a life interest is created in land with remainder to the settlor and his heirs but no absolute and unqualified disposition of property is made, is a deed of settlement within the meaning of the Act. *Reference under Stamp Act*, s. 46, 21 Mad. 422.

Family settlement.—When a dispute arose between a younger brother of the Maharajah of Durbhanga and the Maharajah as to the claim of the former to the properties of the Durbhanga Raj and the younger brother had, by way of compromise, agreed to waive and relinquish all claims which he had, or might have on the Maharajah, in consideration of receiving under the Babooana form of Sunud certain properties and the Maharajah granted and conveyed to his younger brother such an interest in the above mentioned properties as was usually conveyed under a Babooanah grant according to the custom of the family, subject to certain conditions there enumerated; it was held that the deed is not a deed of settlement. *In the matter of the Maharajah of Darbhanga*, 7 Cal. 21 ; but now such settlement would be a conveyance.

Where one brother executed a deed of gift of his entire property in favour of his other brother, who in return executed another deed by which he promised to pay his brother the money he required for his expenses but to a limited amount and charged certain properties for the amount payable and the 1st deed was written on a stamp paper of the value of Rs. 1,125 and the second of the value of Rs. 10, held that the two instruments were parts of the same transaction and the second amounted to a settlement within the meaning of s. 4 and that the duty paid was sufficient. *In re Someshur Datt*, 37 All. 264 : 13 All. L.J. 335 : 28 I.C. 348. See also *Stamp Reference by the Board of Revenue*, 37 All. 159 : 13 All. L.J. 96 : 27 I.C. 731 F.B.

Where by an instrument the executant declared that he intends to hold the property for his life and thereafter it would go to his son if such one is born ; in case no son is born, the property is to be divided amongst the daughters and neices in equal shares and if no more daughters be born, then the daughter who is alive, and the neice would become permanent proprietresses ; *held* that the document is a deed of settlement, *Musst. Lilabati Debi v. Secretary of State*, 2 P.L.R. 18 (Cr.) ; See also *In re Subedar Husseinsha Khan*, 1882 P.J. 247.

The terms need not be in writing.—A deed of settlement remains a deed of settlement although it records terms of a disposition not made in writing, *In re Mansukh Ram*, 7 Bom. L.R. 93.

Settlement in favour of religious and charitable societies.—A trust fund in favour of charity amounting to 3 lacs of rupees was derived from two sources—a lakh of rupees was the result of appeals to charity of the public and was made up of various amounts contributed by the public and the remaining two lacs was the result of exercise of power of appointment vested in the executors of A. H. who were authorised to establish such a charity as they thought fit. An instrument of trust was afterwards executed of the above funds and was engrossed on a stamp paper of Rs. 15, *held* that so far as the 1st item of the sum of one lac of rupees, no previous disposition having been made in respect of it, it was a settlement within the meaning of s. 2 (24) and was chargeable with duty under Art. 58 (A) of the Stamp Act at 8 annas per cent. and as regards the second item of two lacs, the executors having exercised their power of appointment conferred on them by the will, the duty was a fixed duty of Rs. 15 under Art. 7 of the Schedule to the Stamp Act. *In re Abdulla Haji Dawood Bowla Orphanage*, 35 Bom. 444 (447) : 13 Bom. L.R. 646 : 11 I.C. 892.

Where an instrument, described as trust deed, was intended for immediate operation and vested the property in the trustees at once and the provisions as to management and ultimate beneficial interest showed that its operation is to continue beyond the life time of the owner, *Held* that the instrument is a settlement. *Reference by the Collector and Superintendent of Bombay*, 20 Bom. 210 : 1895 P.J. 104. See also *Rajammal v. Aulhiammal*, 33 Mad. 304 : 20 M.L.J. 519 : 8 M.L.J. 139 : 7 Ind. Cas. 357.

Deed effective out of British India.—A deed of settlement partially executed in India though intended to be effective in England, is liable to Indian Stamp duty, *Reference* 1833 P.J. 364.

(25) “soldier” includes any person below the rank of non-commissioned officer who is
 “Soldier.” enrolled under the Indian Army

Act, 1911.]

NOTE.

This clause was added by the Repealing and Amending Act, 1928 (Act XVIII of 1928).

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say,—

- Instruments chargeable with duty.*
- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in British India on or after the first day of July, 1899 ;
 - (b) every bill of exchange, [payable otherwise than on demand] or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India ; and
 - (c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India :

[After (c) the following shall be inserted :

Bengal.—

Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I,

the amount indicated in Schedule IA to this Act shall, subject to the exemptions contained in that schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso, as the proper duty therefor respectively,—

(aa) every instrument, mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Bengal on or after the first day of April, 1922 ; and

(bb) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed out of Bengal on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done in Bengal, and is received in Bengal ;

Madras.—

Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a) or (c) of this section or in Schedule I, the amount indicated in Schedule IA shall, subject to the exemptions contained in that schedule, be the duty chargeable on the following instruments :—

(aa) every instrument, mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in the Presidency of Madras on or after the first day of April, 1922 ;

(bb) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed out of the Presidency of Madras on or after the first day of April, 1922 ; and relates to any property situated or to any matter or thing done or to be done in the said Presidency and is received in the said Presidency.

Punjab.—

Provided that, notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I, and subject to the exemptions in Schedule IA, the following instruments shall be chargeable with duty of the amount indicated in Schedule IA, as the proper duty therefor, respectively, that is to say—

(aa) *every instrument mentioned in Schedule IA as chargeable with duty under that Schedule, which, not having been previously executed by any person is executed in the Punjab on or after the date of commencement of this Act,*

(bb) *every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed out of the Punjab on or after the date of commencement of this Act and relates to any property situated, or to any matter or thing done or to be done in the Punjab, and is received in the Punjab.*

U. P.—

Provided that except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I, the amount indicated in Schedule IA to this Act shall, subject to the exemptions contained in that schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso, as the proper duty therefor respectively,—

(aa) *every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in the United provinces on or after the first day of May, 1932, and*

(bb) *every instrument mentioned in Schedule IA as chargeable with duty under that Schedule which,*

not having been previously executed by any person, is executed out of the United Provinces on or after the first day of May, 1932, and relates to any property situated, or to any matter or thing done or to be done in the United Provinces, and is received in the United Provinces ;]

Provided [*also*] that no duty shall be chargeable in respect of—

- (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument ;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

NOTES.

See s. 5 and Sch. II, Art. 18 of Act I of 1879 and s. 4 of Act XVIII of 1869.

Amendments.—In clause (b) the word “cheque” has been omitted and the words “payable otherwise than on demand” have been inserted after the words “bill of exchange” by the Finance Act (V of 1927) sec. 5. In clause (c) the word “cheque” has been omitted under the same Act, sec. 5.

Local Amendments.—This section has been amended by Bengal Act III of 1922, Madras Act VI of 1922, Punjab Act VIII of 1922 and United Provinces Act IV of 1932.

The Merchant Shipping Act is 57 and 58 Vict. c. 60. The Merchant Shipping Acts are Acts 1 of 1859 and V of 1883. Act XIX of 1838 is a Bombay Act and relates to coasting and fishing vessels and harbour craft. The Indian Registration of Ships Act 1841 is Act X of 1841. It has been amended by Act XI of 1850.

This section declares that instruments, mentioned in Schedule I of the Act, executed after 12th July, 1899, are chargeable with duty mentioned in the schedules subject to the provisions of the Act and other exceptions. The present Local Authorities Loans Act is Act 9 of 1914. As this section makes instruments mentioned in Act is the schedule chargeable with duty, instruments not mentioned therein, are not chargeable with duty. Instruments executed out of British India are not chargeable with duty in British India but they are chargeable only when they are accepted, endorsed, transferred or otherwise negotiated etc. or otherwise acted upon in British India.

Construction.—S. 3 enacts the general principles upon which the duty is chargeable under the Act. Sub-clause (a) of the first part of the section excludes by inference documents which were executed at places other than in British India. Sub-clause (c) provides that a document although executed in a country other than British India attracts duty if it relates to immovable property in British India, and if the plaintiff rely on that portion of the deed which does not relate to immovable property in British India then no duty is payable, *Herbert Francis v. Nawab Saiyed Muhammad Akbar*, 7 Patna 99 : 9 P.L.T. 221 : 105 I.C. 502 : 1928 A.I.R. 133 (Patna).

“The goodness or badness of vendor’s title in no way affects the question of stamp duty. The instrument has to be stamped according to its true intent and meaning of the bargain which it represents.”

“Further it appears to me to be improbable that the legislature intended that in order to assess stamp duty upon a conveyance a decision should be arrived at upon the question whether in all the circumstances of the case there is an equity or implied obligation that the purchaser should indemnify the vendor against liability for the mortgage debt.” *U. K. Janardhan Rao v. The Secretary of State for India*, 58 Cal. 33 : 34 C.W.M. 470 : 127 I.C. 775 : 1931 A.I.R. 193 (Cal.)

Test of liability to stamp duty.—In determining whether a document comes within the language of the Stamp Act, the Court has to consider whether the document produced is one which fairly falls within the description of any one or more of the documents there mentioned. If it does it must be stamped, otherwise it is not liable to be stamped, *Narain Coomary v. Ramkishun Das*, 5 Cal. 684 (685). Where *prima facie* an instrument is chargeable with duty, the onus is on the party who pleads the non-liability to duty to show that the instrument falls within any of the exceptions specified in the Stamp Act. *Chanter v. Dickinson* (1843) 5 Man. and G. 253 (260) : 12 L.J.C.P. 147 : 134 E.R. 560.

Liability to Stamp duty.—The substance of the transaction is alone to be considered upon the question whether an instrument is liable to stamp duty and not merely the form of the instrument. *Christie v. Commissioners of Land Revenue*. L.R. 2 Exch. 46 ; *In re Menglas Tea Estate*, 12 Cal. 383 (386) ; *Bank of Bengal v. Locust*, 51 Cal. 185 : 28 C.W.N. 497 : 41 C.L.J. 1 : 81 I.C. 471 : 1924

A.I.R. 578 (Cal.). See also *In re matter of the Maharajah of Durbhanga*, 7 Cal. 21.

Nature of instrument.—The legal nature of a document must be determined according to its contents and not by value of the stamp paid. *Venkatarama Iyer v. Narasingha Rao*, 38 Mad. 134 (135): 24 M.L.J. 180: 1913 M.W.N. 72: 18 Ind. Cas. 135. See also *Asrath Narayan Aslaputtre v. chimabai Gopalrao Sadakar*, 27 Bom. L.R. 1246: 91 I.C. 330: 1926 A.I.R. 107 (Bom.).

The substance of the transaction is to be determined as it is disclosed by the instrument rather than its form. *Subbaraya v. Vythilinga*, 16 Mad. 85; *Bank of Bengal v. Lucas*, 51 Cal. 185: 28 C.W.N. 497: 41 C.L.J. 1: 81 I.C. 471: 1924 A.I.R. 578 (Cal.). The mere fact that a certain person chooses to give a certain title to an instrument by no means makes it that instrument, *Ratan Singh v. Pirbhu Dayal*, 1931 A.L.J. 230: 131 I.C. 135: 1931 A.I.R. 302 (All.): See also *Gopal Saho v. Nand Kumar Singh*, 5 Luck 721: 7 O.W.N. 438: 123 I.C. 53: 1930 A.I.R. 300 (Oudh): 1930 I.R. 149 (Oudh). The executants' description of an instrument in it by a particular name is not the sole and indeed an essential guide in determining its true nature; the question has to be decided primarily with reference to its contents and to the intention of parties as may be gathered therefrom. *Lah Singh and others v. Mehr Singh and others*, 135 I.C. 193: 1932 A.I.R. 118 (Lah): See also *Appa v. Kachai Baiyam Kutti*, 137 I.C. 458 and cases under s. 18 and s. 19 *post*.

As an instrument must be stamped at the time it is made, the words "being in British India" would appear to mean—being in British India at the time of the making of the instrument, *Moran v. Mittu Bibee*, 2 Cal. 58 (87).

Execution in British India for use out of British India—Where an agreement was first executed in England by D and E and by A, the senior partner of the firm, and stamped with the stamp required by British Law for agreement executed in England, and *was again subsequently executed in India by B and C*, the other two partners, but not stamped with an Indian Stamp *held* that the agreement is liable to an Indian Stamp Duty and the penalty having been paid, the document was admitted in evidence. *Oakes & Co. v. Jackson*, 1 Mad. 134. See also *Damodar Das v. Major Moran*, 69 P.R. 1894, and *The International Banking Corporation v. Lakhmidas Premji* (O.C.J.) decided by Buckland J. in July 1925, (unreported) where it was further *held* that acceptance of a bill out of British India does not take a bill executed in British India a foreign bill.

Partial execution in British India.—An instrument of settlement executed partially in British India is liable to stamp duty as prescribed in British India, although it was intended, that the instrument was to take effect in England. *Reference under Stamp Act, 1883* P.J. 364.

Arbitration.—An agreement to refer to arbitration a dispute between parties should be stamped, and a subsequent variation in

the names of the arbitrators will not be a reference to arbitration but only a substitution of the name of an arbitrator in place of another and so the document asking for substitution need not bear stamp duty as the Stamp Act does not provide for any stamp. *Kali Charan Banik v. Mani Mohan Shaha Banik*, 28 C.W.N. 871 (873). See also *Sham Das v. Khiman Mal*, 8 S.L.R. 302 : 29 I.C. 602 as to addition of another arbitrator.

Endorsed, transferred etc.—See Negotiable Instruments Act. (Act XXVI of 1881) Ss. 14, 15, 16, 61, 64. S. 5 of the Stamp Act requires every promissory note to be stamped if it is “accepted or paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in British India.” *Mahomed Rowther v. Mahomed Hussain Rowther*, 22 Mad. 337 : 9 M.L.J. 135. See cases under Ss. 18, 19.

In case of an instrument executed out of British India it is sufficient that the necessary stamp of British India is attached at the time of the decree. *Kunhi Koya Haji v. Panikha Vittil Assam Bara*, 36 M.L.J. 188 : 25 M.L.T. 191 : 52 Ind. Cas. 477.

A promissory note in favour of the Nawab of Rampore as ruler of that state was not stamped and was not required to be stamped under the law of that state, *held*, that the pro-note could be admitted in evidence in British India. *Musst. Amina Begum v. His Highness the Nawab of Rampore*, 8 All. L.J. 566 : 10 Ind. Cas. 247.

An alteration of the date of payment on a bill of exchange by consent of parties does not render it a new instrument so as to require it to be stamped again. *Cox & Co. v. Pestonji & Co.*, 50 Bom. 656 : 28 Bom. L. R. 1264 : 99 I. C. 489 : 1927 A. I. R. 13 (Bom.).

A bill of exchange (demand draft) drawn by the Imperial Bank of India, Calcutta upon the Imperial Bank, Lahore and payable to a third party (the Commercial Syndicate) and payable on demand, is an instrument freed from Stamp duty by the amendment introduced by the Finance Act (Act V of 1927). *Re, the Imperial Bank of India, Calcutta*. 56 Cal. 233 : 32 C.W.N. 1015 : 1928 A.I.R. 566 (Cal.).

Other documents executed out of British India but affecting property in British India.—An unstamped instrument executed out of British India will be valid and be admissible in evidence in British India if it does not affect property in British India. *Narayan v. Beruji*, 7 Bom. H.C.R. A.C. 140.

Property situated in British India.—Property not in *esse* is not property in British India. *Moran v. Mitlu Bibee*, 2 Cal. 58.

Assignment of a chose in action—An equitable assignment of a chose in action by a letter, does not require a stamp, if at the time of assignment the chose in action was not in British India. *Meghji v. Ramji Joita*, 8 Bom. H.C.R.O.C. 169.

Policy of Insurance.—An assignment by endorsement of a Policy of Insurance is liable to stamp duty but not the retransfer. *In the matter of Thomson's Policy*, 3 Cal. 347.

Power of attorney.—No duty was chargeable on a Power of attorney executed in Australia, under Act I of 1879, *Reference under Stamp Act, s. 46*, 14 Mad. 244. Where a Power of Attorney is executed in England but was intended to be in operation in British India and was stamped according to the law in British India, held that the courts in British India need not consider whether it complies with the law of England; it is sufficient if it complies with the stamp law in force in British India. *In the Goods of Ma: Adam*, 23 Cal. 187.

Instruments not liable to duty.—*Compromise filed in Court.* A petition of compromise is not liable for stamp duty under the Stamp Act as it merely contains a recital of a previous oral agreement and is evidence of an oral agreement. *Pitambar Gain v. Uddhab Mondal*, 12 C.W.N. 59. When a *solenama* refers to the subject of the claim, it becomes a proceeding of Court and does not require registration or stamp under the Stamp Act. *Ambica Charan Sher Kaibarta v. Srinath Datta*, 19 Ind. Cas. 551 (Calcutta).

• **Petitions to Court.**—A petition to Court informing it that the parties have agreed that the defendant will deliver a quantity of wood to the plaintiff, and requesting that the cause may be removed from the file, need only be stamped under the Court Fees Act. *Reference under Stamp Act s. 46*, 8 Mad. 15. See also *Reference under Stamp Act*, 9 Mad. 146.

Admission of ownership.—An admission of ownership is not a written contract or engagement but only evidences that the party is a depository or trustee, hence it does not require a stamp. *Reference (1868)* 4 Mad. H.C.R. 26.

Arbitration.—A request for the appointment of two arbitrators and the issue of an award in pursuance of an arbitration clause in a contract, does not require a stamp. *Finlay Muir & Co. v. Radha Kissen Gapi Kissen*, 36 Cal. 736: 3 I.C. 185.

Assignment of back rent.—A deed of assignment in favour of the purchase of a Zemindary entitling the purchaser to collect back rents from the tenants as agent of the outgoing landlord, on receiving a commission, does not require stamp duty. *Satya Narayan Chowdhury v. Mahadeo Prasad Sahu*, 123 I.C. 794: 1929 A.L.R. 395 (Patna).

Declarations.—A document meant to be a declaration under rule 10 (2) of the Berar Electoral rules need not be stamped. The mere fact that the document was written on a one rupee general stamp and his signature was attested by the Magistrate does not alter the nature of the instrument. *Sadasheo Waman Kelkar v. R. V. Mahajani*, 60 I.C. 871 (877).

Dowl Firist.—A *dowl Firist* being merely a Memorandum to which the tenants affix their signature in token of agreement, is not a contract and is not required to be stamped or registered. *Gunga Pershad v. Gagan Singh*, 3 Cal. 322: 1 C.L.R. 328.

Entries in an account book.—Entries in an account book of amount payable and signed by the parties are not liable to stamp

duty. *Ramdayal v. Kumar Gangadhar Bagla*, 8 Bur. L.T. 238 : 29 I.C. 943.

Notice to tenants.—A written order on tenants to pay rent to a person in whose favour the landlord had executed a deed of release, does not require a stamp as such orders do not come under the description of any of the instruments which the law requires to be stamped. *Bukshee Kurnee Lall v. Maharanee Thakoomata Sai*, 25 W.R. 80.

EXCEPTIONS.

(a) *Instrument executed by or on behalf of or in favour of Government*.—Mortgage executed by Collector.—A usufructuary mortgage bond executed by Collector on receipt of a decree by the Munsif under s. 17 of the Bundelkhand Alienations Act (II of 1903), is not an instrument executed by or on behalf or in favour of the Government, hence is not exempted from stamp duty. The Government order dated 31st August 1909 expressly remits duty upon a fresh mortgage executed in lieu of a previous mortgage for the purpose of giving effect to the provision of s. 9 sub-sec. (2) of the Bundelkhand Alienation of Land Act only. *Somwarpuri v. Matabadal and others*, 38 All. 351 : (1916) 14 All. L.J. 422 : 34 I.C. 280 F.B.

(b) Sale transfer or other disposition of a ship or other vessel.

(c) Reduced rates in favour of Local Authorities under Local Authorities Loans Act, 1879, (now Act 9 of 1914).

(d) Remissions by the Governor-General in Council under s. 9 of the Act.

(e) Other exemptions provided under each entry in the Schedule.

The following exemptions occur in other Acts.

- (1) All instruments under the Co-operative Societies Act, 1912 amongst members.
- (2) S. 40 of the Defence of India Act, 1903 (Act VII of 1903).
- (3) S. 51 of the Land Acquisition Act, 1894 but under the amendment of s. 26 all awards are decrees of a Civil Court.
- (4) S. 115 of the Presidency Towns Insolvency Act, 1909 (Act III of 1909).

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are

Several instruments used in single transaction of sale, mortgage or settlement.

employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance,

mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee [*Two Rupees in Bombay*] instead of the duty (if any) prescribed for it in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

• . [Bengal.—In sub-section (1) of section 4

(a) after the words and figure “in Schedule I” the following shall be inserted namely :—

“or in Schedule I-A, as the case may be ;”

(b) for the words and brackets “instead of the duty (if any) prescribed for it in that Schedule” the following shall be substituted, namely :—

“if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of one Rupee eight annas, if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be.”

Madras.—In sub-section (1) of section 4—

(a) after the words and figure “in Schedule I” the words, figure and letter “or in Schedule IA as the case may be” shall be inserted ;

(b) after the words “one rupee” the words “or one rupee eight annas” shall be inserted ;

(c) for the words “in that Schedule” the words, figures and letter “in Schedule I or in Schedule IA as the case may be” shall be substituted.

Punjab.—*In sub-section (1) of section 4—*

(a) *for the figure 1 after the words “in Schedule” shall be substituted the figure and letter “IA,”*

(b) *between the word “rupee” and the word “instead” shall be inserted the words “and eight annas.”*

U. P.—*In sub-section (1) of s. 4—*

(a) *after the words and figure “in Schedule I” the following shall be inserted namely, “or in Schedule IA, as the case may be,”*

(b) *for the words and brackets “instead of the duty (if any) prescribed for it in that Schedule” the following shall be substituted, namely,*

“If the principal instrument be chargeable with the duty prescribed in Schedule I or with a duty of one rupee eight annas, if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA as the case may be”].

NOTES.

See S. 6 of Act I of 1879 and S. 13 of Act XVIII of 1869.

Amendments.—This section has been amended by Bengal Act III of 1922; Madras Act VI of 1922; Punjab Act VIII of 1922. Bombay Act II of 1932.

The several instruments mentioned in this section must relate to (1) sale, mortgage or settlement and (2) must be for completing single transaction. This section provides that the principal instrument will only bear full stamp, the other instruments need only bear an one rupee stamp.

This section does not deal with distinct matters in one instrument but with cases where several instruments have to be executed to complete one transaction of sale, mortgage or settlement.

Time of execution of instruments.—No time is specified in the section, but it may be presumed that the several documents must be executed at the same time or within reasonable time of execution of one another. If the principal instrument does not require a stamp then other instruments are also not liable to be stamped. *In the matter of Hanmappa and others*, 13 Bom. 281 (285).

Settlements.—See cases under s. 2 (24) *supra*.

Mortgage.—The Rangoon Gymkhana Club conveyed its properties in trust in favour of certain trustees who were to hold the property of the club according to the rights and interests therein respectively of the members of the club. Certificates of debentures were issued to the subscribers which stated the names of the subscribers and the amount of stock held by them but contained no promise to pay and were not negotiable but were marketable and transferable. Held that the certificates were not debentures within the meaning of Article 27 of the Stamp Act as it neither created nor acknowledged a debt but were instruments for completing the trust deed under which the assets of the club were mortgaged as security for the debenture stock and that therefore they were liable to be stamped not as debentures under Art. 27 but with a duty of Rupee 1 under s. 4 (1) of the Indian Stamp Act. *In re Rangoon Club*, 4 Rangoon 456: 100 I.C. 315: 1927 A.I.R. 37 (Rangoon).

One transaction.—Where documents form one transaction. Two brothers came to an agreement as to the settlement of their joint family property, and embodied the same in an instrument which was stamped according to the value of the properties dealt with thereby. Subsequently, the parties to this deed executed a second deed of settlement which modified the provisions of the 1st instrument but dealt with no new property. Both the instruments were contingent on the happening of future events which did not happen at the date of execution of the instrument. Held that the transaction fell within the meaning of s. 4 of the Stamp Act, as the intention of the contracting parties was that the settlement of certain moneys and properties covered by the 1st deed should be readjusted. No new property was introduced into the second deed. Both were contingent upon future events. The intention was that they were to form and to be regarded as one deed; and full duty having been paid on the 1st instrument the 2nd deed required a stamp of Rupee 1 only. (*In the matter of Shambhu Dayal*) Stamp Reference by the Board of Revenue, 37 All. 159: 13 All. L.J. 96: 27 I.C. 731. One brother executed a deed of gift of his entire property in favour of another brother, who in return executed an instrument wherein he promised to pay the expenses of that brother to a limited amount and charged certain properties for the amount payable. The 1st one was engrossed on a stamp of Rs. 1125 and the 2nd one on a stamp of Rs. 10. Held that the two documents formed part of the same transaction and amounted to a settlement within the meaning of s. 4 and the duty paid was sufficient. Stamp reference by the Board of Revenue, 37 All. 264: 13 All. L. J. 335: 28 I.C. 348. But see *Bijnath Dutt Jha v. Musst, Pulohee Dabain*, 20 W.R. 36, *supra*.

When by an instrument marked Ex. A, H sold certain lands to V for consideration and in the same deed R an undivided nephew of H endorsed his consent to the sale; held that the sale and endorsement of consent are several instruments within the meaning of this section, and that his consent should have been written on a separate stamp paper of one rupee.

Another document Ex. B was executed by one M in favour of D whereby M having recited that M had adopted D and constituted him

his heir, and in the same instrument B and P the parents of D separately endorsed their consent to the adoption. *Held* as the Ex. B does, confer a right to adopt, it need not be stamped, hence the endorsement need not be stamped. *In the matter of Hanmappa and others*, 13 Bom. 281. (Note—Under Article 3 of this act an instrument recording an adoption is liable to duty).

Where a purchaser of a property paid the consideration partly in cash and partly by a mortgage in favour of his vendor of his interest acquired in the land sold, the instrument of mortgage is not an instrument for the purpose of completing the sale of the property, consequently it is chargeable with the full amount of duty provided for a mortgage under Art. 40 of Schedule 1 of the Stamp Act. *Reference under Stamp Act 1899*, 1 L.B.R. 205 F B.

Where the subsequent deed is for the purpose of modifying the 1st deed—A second document is executed which alters the terms of the first lease which was stamped, executed and registered, 18 days before and which was a complete document in itself; the second document is to be stamped in the same manner as the first one and should not be regarded as a document for the purpose of completing the transaction as it was a substitution so far as the rent was concerned, and of certain new terms... *Byjnath Dutt Jha and others v. Musst. Putsiohee Debain and another*, 20 W.R. 36. See also *Lalit Mohan Ghosh v. Gopali Chuck Coal Co., Ltd.*, 39 Cal. 284 F.B. where it was held that a document varying the amount of rent payable under an existing lease requires registration.

Reference of one document in another—A reference in a later deed to a prior deed, for the purpose of showing the consideration of the later deed, will not constitute the later deed "several documents" within the meaning of this section. *Dadoba v. Krishna*, 7 Bom. 34.

Schedule to a deed—not separate.—A schedule attached to a deed is not a separate instrument which may be liable to stamp duty. *Reference under the Stamp Act*, 6 M.H.C.R. App. XXXVI.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

NOTES.

See s. 7 paragraph 1 of Act 1 of 1879 and s. 14 paragraph 2 of Act XVIII of 1869. See s. 4 of the Stamp Act, 1891 (54 and 55 vict. c. 39).

Under this section one instrument comprising or relating to several distinct matters is to be chargeable with the aggregate duty. The test is not whether they *embody distinct contracts*, but whether

they include *distinct matters*. such distinct matters are not to be infered from subsidiary clauses in the contract such as penal clauses etc., s. 5 relates to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one (8 Cal. 254 at page 259). The inferences to be drawn from case laws can be classified thus:—

Class I—That there should be distinct matters *i.e.* matters not connected with each other and not distinct contracts.

Class II—That there should be distinct consideration for each category.

Class III—That the various stipulations should not be subsidiary to one main clause.

Class IV—That in case of an instrument being executed by several persons in respect of the same or different properties there should be community of interest for all of them jointly.

Class V.—That the stipulation may be unnecessary *i.e.* the stipulation if omitted from the deed would have been granted by a court of law, *viz.* as costs etc.

Construction.—The test under s. 7 (now s. 5) is whether the instrument contains distinct matters. If it does then it must be charged with aggregate of duties payable in respect of all such matters even though they are written on the same paper and are signed by all the parties concerned, but if the matter is single the duty need not be increased though several executants had signed separately and with separate endorsements reciting their liability. If the contract related to the same matter then it is immaterial whether the contract relates to distinct contracts. *Musa v. Khan*, 102 P.R. 1895.

Under s. 5 (now s. 6) of Act I of 1879, the test is whether the instrument contains "distinct matters" and not whether they contain "distinct contracts." *In re stamp duty liable on a certain deed executed by M. Ghulam Haider and Abdul Latif in favour of the Punjab Banking Co., Ltd., Peshwar*, 15 P.R. 1910: 4 P.L.R. 1910: 16 P.W.R. 1910: 5 Ind. Cas. 872. See also *Tej Ram and another v. Maqbul Shah and others* 100 I.C. 746: 1928 A.I.R. 370 (Lahore).

The test to be applied is whether a document evidences a contract of sale or a sale and some other independent transaction, and if it is one contract of sale any number of subsidiary stipulations it may contain will not change the character of the instrument. *Kyd v. Mahomed*, 15 Mad. 150.

There must be distinct consideration for each category—A stamp for each category upon a document falling within two distinct categories, is required only where there is what is called a 'distinct consideration', reference by the Board of Revenue 1 Mad. 133: See also *Reference under stamp Act*, 25 Mad. 3; *In re Secretary to Commissioner of Salt, Abkari etc.* 43 Mad. 365; 38 M.L.J. 506: 1920 M.W.N. 247: 56 I.C. 154 F.B.

Application.—In applying s. 5 of the Indian Stamp Act one is concerned with what the parties purported to provide for by an instrument and not whether any particular provision was necessary or might have been dispensed with.

An acknowledgment by the principal cannot have the same legal effect as a release by the former of his right to claim account, *Ramaswami Aiyar v. Gnana Mani Nachiar*, 31 M.L.J. 854 (855).

S. 7 paragraph (1) (now s. 5) of the Stamp Act relates only to transactions so distinct in their nature as to be capable of being carried out by as many separate instruments instead of one, *Ex parte Hill*, 8 Cal. 254 : 10 C.L.R. 33. *In re Vithal Govind*, 1883 P.J. 277. Section 5 does not apply to a document, which embodies different covenants relating to the same transaction.

When the transaction is one and one only, the subject matter of the agreement being the repayment of the amount advanced, the mere fact that there were two covenants in the deed, the first making certain properties chargeable in the first instance, and the second providing that in the event of the sale proceeds of the aforesaid properties being found insufficient the mortgagees would be entitled to proceed against certain other properties, does not in any way affect the question. Therefore, a deed containing two distinct contracts, one by all the executants mortgaging a house and the other by two of the executants agreeing to make one half share in a shop liable as a collateral security for the mortgage debt, is correctly stamped if stamped as a mortgage deed only. *Tej Ram and another v. Magbul Shah and others*, 108 I.C. 746 : 1928 A.I.R. 370 (Lahore).

Not Separate and distinct matters. *Covenants as to title etc.*—An instrument of conveyance with covenants of title, is not an indemnity bond and a conveyance as there is only one consideration and the covenants as to title are informal expressions, and therefore the instrument is to be stamped with a duty calculated on the consideration, *Reference by the Board of Revenue*, 1 Mad. 133.

Covenant of renewal.—An instrument of lease for a term of three years containing a covenant of renewal on the part of the lessor at the option of lessee is only chargeable with stamp duty as a lease for three years as the transaction to which the matter relates is single and indivisible, as the clause for renewal is ancillary to the contract of lease and is part of the consideration for the lease.

An instrument can be regarded as falling under two distinct heads, each requiring a separate stamp only where there is what is called a "distinct consideration" for each and not where there is unity of consideration, *Reference under the Stamp Act s. 57*, 25 Mad. 3.

Covenants to indemnify as to expenses.—A covenant to indemnify against expenses by mortgagee in protecting the title of the mortgagor, is a necessary incident of a mortgage, hence separate stamp is not necessary. *Damodar Gangadhar v. Vamanrao Lakshman*, 9 Bom. 455 : 1885 P.J. 64.

Agreements to supply fish.—An agreement by some villagers to supply fish in consideration of advance made is not one comprising or relating to "distinct matters" within the meaning of s. 5 of the Stamp Act, 1899. *Maria Jacob Rodrigues v. Peter Fernandu*, 19 M.L.J. 35 : 5 M.L.T. 135 : 2 Ind. Cas. 481 F.B.

Penal clause.—An agreement containing a penal clause, whereby the obligor agrees to pay a named sum as penalty in case of his failure to fulfil the conditions of the agreement is chargeable with duty leviable on a bond for the penal clause. The penal clause is subsidiary to the agreement and is not a distinct matter, and the instrument is chargeable as an agreement; *per Stuart C. J. in reference by the Board of Revenue N. W. P. under Act I of 1879*, 2 All. 654 F.B. : doubted *In the matter of Gajraj Singh*, 9 All. 585 F.B. and dissented from in *Gisborne & Co. v. Subal Bourie*, 8 Cal. 284.

Lease and Mortgage.—An instrument by which a debtor leased certain lands to his creditor, and empowered the latter to appropriate a portion of the annual rent in satisfaction of the debt, is both a lease and usufructuary mortgage, but is only required to be stamped as a mortgage as it did not relate to distinct matters within the meaning of s. 7 (now s. 5) of Act I of 1879. *In the matter of a Reference from Board of Revenue under s. 46 of the General Stamp Act, Erparte Hill*, 8 Cal. 254 : 10 C.L.R. 33.

An instrument by which certain parties jointly executed and took lands on lease and hypothecated other lands as security for the rent, do not relate to distinct matters, but only to the terms on which the lessors let the land and lessees took the holding. The document should be stamped as a mortgage deed that being the higher duty. "It is an instrument by which for the purpose of securing a future debt, that is, the rent to be paid, and for securing the performance of an engagement, that is, the engagement to pay rent and to deliver certain other articles yearly, it created in favour of the lessor a right over certain other property." *Reference under Act I of 1879*, 17 All. 55 ; 14 All. W.N. 204 F.B. : *Wilaity v. Baksh*, (1884) 4 All. W.N. 318.

Prospecting lease.—An agreement with each ryot, by which in consideration of a payment of one rupee, the (landlord) granted a license to prospect, agreed to sell if required, and covenanted to indemnify the company against claims of other persons, does not relate to distinct matters so as to require distinct stamps. *Reference under Stamp Act, s. 57*, 24 Mad. 176. F. B.

Covenant to pay the consideration by instalments in a covenant, *Limmer Asphalt Paving Co. v. Inland Revenue Commissioners* (1871—72) Exch. 211, 217.

Promissory Note and stipulation to pay by instalments, in case of default whole to become due forthwith, time given or security taken or composition with either will not affect the right of holder against any other—*Kirkood v. Carroll* (1903) 1 K.B. 531, C.A.

Principal and surety.—Where on a stamp paper the contract by the principal was written and signed by him, then on the same stamp

paper the contract by the surety was also written and signed by the surety, *held* that the contract by the surety being incidental and accessory to the contract by the principal in respect of one and the same consideration, the two together constituted but one instrument, and a single duty is payable, notwithstanding the apparent separation of the clauses relating to the principal and the surety; the leading object being the security of the sum. It is not necessary that the document should be commenced on any particular side of the instrument. *Dowlat Ram Harji v. Vitho Radhoji*, 5 Bom. 188.

An instrument of mortgage, securing repayment of loan of Rs. 2,000 by which both the mortgagor and surety have become jointly and severally liable and which enabled the mortgagee to recover the same from either of them, is sufficiently stamped, if it is stamped as a mortgage deed, *In re stamp duty leviable on a certain deed executed by M. Ghulam Haidar and Abdul Latiff in favour of the Punjab Banking Co. Ltd., Peshwar*, 15 P. R. 1910 : 4 P.L.R. 1910 : 16 P.W.R. 1910 : 5 Ind. Cas. 812; *Musa v. Khan*, 102 P.R. 1895.

A deed containing two distinct contracts one by all the executants mortgaging a house and the other by two of the executants agreeing to make one half share in a shop liable as a collateral security for the mortgage debt, is correctly stamped if stamped as a mortgage deed only. *Tej Ram and another v. Maqbul Shah and others*, 108 I.C. 746 : 1928 A.I.R. 370 (Lahore).

Rent.—Where in a lease certain rent was payable monthly and a month's rent was payable in advance to be repayable after the expiration of the lease, *held*, that the lease did not contain distinct matters. *Reference under Stamp Act*, s. 61 (1), 26 Mad. 473. See also *Reference under Stamp Act*, 25 Mad. 3.

Sale and mortgage. *Not distinct matters.*—An instrument by which the vendor mortgaged land not included in the deed of sale as security for the due performance of his covenants, need not be stamped both as a sale and a mortgage by virtue of the provisions of s. 5 of the Indian Stamp Act, 1899, as the sale deeds are not instruments comprising or relating to distinct matters within the meaning of that section. *Secretary to the Commissioner of Salt and Abkari and Separate Revenue (Referring Officer)*, 43 Mad. 365 : 38 M.L.J. 506 : 1920 M.W.N. 247 : 56 I.C. 154 F.B. *overruling Govindan Nambudiri v. Moidin*, 41 Mad. 469 : 33 M.L.J. 693.

Sale with an arbitration clause.—A contract for or relating to sale of goods comprised in bought and sold notes, with a clause to refer disputes to arbitration, and contained in letters, is not a distinct matter within the meaning of s. 5 of the Stamp Act as the agreement to refer to arbitration is a part of the contract itself and therefore falls under exemption clause (a) to Article 5 as it comes under Art. 43 of the Stamp Act. *The Bombay Co Ltd. v. The National Jute Mills Co., Ltd.*, 39 Cal. 669 : 16 I.C. 155; *Tara Chand v. Louis Dreyfus & Co.*, 10 S.L.R. 14 : 35 Ind. Cas. 449. The case of *Hurdwary v. Ahmed Musaji*, 13 C.W.N. 63 : 1 Ind. Cas. 371, to the contrary was reversed on appeal in *Bajinath v. Ahmed Musaji*, 40 Cal. 219 : 17 C.W.N. 395 : 18 Ind. Cas. 978.

Sale by one Company to a new Company.—A document contained a lease for 999 years of coal lands. The company in whom the coal lands were vested went into liquidation for the purpose of reconstruction and on this reconstruction an agreement was made, for the transfer to another company bearing the same name called Association. Then there was another agreement by the Association to transfer the coal mining rights in and under the properties to Messrs. Shaw Wallace & Co. for consideration and for the period and subject to the payment of rent and royalties expressed in the lease. Finally, Messrs. Shaw Wallace & Co. agreed to transfer to Parasea Collieries Ltd. all these mining rights and other rights subject to the same conditions for consideration. It was thought desirable to have concurrence of (1) Mr. C. C. Kilburn; the surviving-trustee in the debentures loan (2) the old company, (3) of the Association, (4) of Messrs. Shaw Wallace & Co. *Held*, that the inclusion of these conditions did not alter the nature of the transaction and the necessary concurrence of several persons does not make it a double lease, and that the instrument is not a multifarious document within the meaning and application of s. 5 of the Stamp Act. *In the matter of the Parasea Collieries, Ltd.*, 37 Cal. 829 : 14 C.W.N. 861 : 6 Ind. Cas. 762.

Separate and distinct matters.—An agreement to lease mining rights belonging to several landlords not having joint interest in the land, with a company, is to be stamped with the aggregate amount of duties with which separate instruments with separate landlords would be chargeable, as the instrument dealt with "distinct matters," i.e., with agreements with several persons with regard to their separate property. *Reference under Stamp Act, s. 57*, 24 Mad. 176 F.B.

For same reasons an agreement between one company and different owners of lands having interest in different properties, is to be stamped with the aggregate amount of stamp. *In re Body Naikan and Best & Co.*, 10 M.L.J. 378 F.B.

The test under the Indian Stamp Act is not whether the instrument contains distinct contracts but whether they contain distinct matters, *In re the stamp duty leviable on a certain deed by M. Ghulam Haidar and Abdul Latif in favour of the Punjab Banking Company Ltd., Peshwar*, 15 P.R. 1910 : 4 P.L.R. 1910 : 16 P.W.R. 1910 : 5 Indian Cas. 812 ; *Tej Ram v. Maqbul Shah*, 108 I.C. 746 : 1928 A.I.R. 370 (Lah.) *Mussa v. Khan*, 102 P.R. 1895 ; *Kyd v. Mahomed*, 15 Mad. 150.

Conveyance and release.—Where a conveyance is written on the face of a stamped paper but a release was written on the back of the stamp paper, the release can be validated on payment of deficiency of duty. *Reference under Stamp Act, s. 46*, 11 Mad. 40 F.B.

Conveyance and lease.—Where by one deed a conveyance of freehold lands was made plus a transfer of interest secured by leases, *held* that the instrument is to be charged with duty as a conveyance and a transfer. *Reference under Stamp Act*, 23 Cal. 283.

Counterpart of a lease.—A counterpart of a lease and an agreement that the unpaid arrears of rent would be a charge upon improvements by the tenant was held to be stamped as a counterpart of a lease and as a mortgage, *Govindan v. Moidin*, 41 Mad. 469 : 33 M.L.J. 693, dissented from in *Secretary to the Commissioner of Salt, etc.*, 43 Mad. 365 (371) : 38 M.L.J. 506 : 1920 M.W.N. 247 : 56 I.C. 154 where it was thought the decision was arrived at without argument.

Loans.—The plaintiff suing on a document containing a promise to repay in money with interest as also a promise to deliver a quantity of grain, may succeed on the suit for money if he abandons his claim for grain, *Chimnaji v. Ranu*, 4 Bom. 19.

Where an instrument creates interest in land and is also a bond for money lent, it may be admitted in evidence in a suit for recovery of money only, if stamped sufficiently for such purpose. *Luchmееput Singh Doogar v. Mirza Khyrat Ali*, 12 W. R. 11 : 11 B.L.R. 18 F.B.

One instrument by several persons.—Where sixteen persons borrowed rice from one creditor and executed one bond in respect of all the loans and it was stated how much is borrowed by each, and the bond did not show one joint agreement by all to pay the entire debt; held that there are sixteen distinct contracts and the instrument is liable to stamp duty on that basis, *Purnandas Jiwandas v. Jamunabai*, 10 Bom. 47 : 1885 P.J. 126.

Where several *mirasdars* of village authorised one person in writing to realize communal income due to them and distribute the same among them, and cultivate their lands etc., held there need be only one stamp. *Reference under Stamp Act*, s. 46, 15 Mad. 386.

One instrument by several persons is liable to one duty only if the instrument is executed in furtherance of a common object only or if there be community of interest, *Bowen v. Ashley* (1 Bos. and p. 274 N.R.).

Execution of single power of attorney by several persons.—Where several persons not having a common interest and for matters unconnected with one another, executed one power of attorney, it was held that these are distinct matters and separate powers of attorney should be executed, *Reference under Stamp Act*, s. 46, 2 M.L.J. 178 F.B. But the mere fact that two persons execute it, does not make one instrument contain distinct and separate matters if the two persons execute it jointly, then the instrument is one and is a single instrument for the purpose of stamp duty. *Wilaity v. Pir Baksh*, (1884) 4 All. W.N. 318.

Principal and agent.—Where in the account book of the agent was entered the words "Due to me Rs. 24,850-12-4," and other statements were recorded in these words :—"The balance of the liability is made up of moneys advanced by my agent—on my behalf.—The above does not include interest due on them, . . . I have examined the several items of account therein in detail and I find them to be correct. I hereby release my agent. . . . from all claims to account against him by me or any one claiming under or in trust for me. . . . I hereby acknowledge the correctness of every

one of any one of the items of expenditures" and then the statement was signed by the principal. *Held per Abdur Rahim, Offg. C. J.*, that the document deals with distinct matters being 1st a release falling under Art. 53 of the Stamp Act in the latter portion and an acknowledgment in the former portion; it should be stamped under s. 5 of the Stamp Act. *Per Phillips J.*—That as the recital as to release relates to the acknowledgement in the 1st portion, the two matters are not distinct matters, and the document cannot be said to come within the definition of "release" and an "acknowledgment." *Ramaswami Aiyar v. Gnanamani Nachiar*, 31 M.L.J. 851: 1917 M.W.N. 121: 5 L.W. 279: 37 I.C. 984.

Several properties.—If several properties for a price specified as against cash are conveyed by the same deed, it is not thereby made liable to be treated as one containing distinct matters but the instrument is to be stamped as one deed, *In re Tukaram Hari Atre*, 10 Bom. H.C.C. 354. Where several properties are sold successively at an execution sale to the same purchaser, one certificate of sale need only issue, as these are not distinct matters. *In re Vithal Govind*, 1883 P.J. 277; *Narsidas Bhagawandas v. Jivla Khusal*, 1883 P.J. 333, but see now cases under Art. 18 *infra*. A conveyance of several properties to several persons by a single instrument would require several stamp, *Freeman v. Commissioners of Inland Revenue*, L.R. 6 Ex. 10. But in the Privy Council case of *Suniti Bala Debi v. Dhara Sundari Debi Choudhuran*, 46 I.A. 272: 47 Cal 175: 24 C.W.N. 297: 11 L.W. 227: 22 Bom. L.R. 1: 17 A.L.J. 997: 1919 M.W.N. 821: 37 M.L.J. 483 it has been held that it would be possible—though inconvenient—to execute in one document a mortgage of one-half of an entire property in favour of each of two mortgagees. By this means two independent mortgages would be combined in one deed.

Separate contracts with separate persons.—An instrument embodying separate contracts with separate persons should bear the aggregate stamp, *Waldington v. Francis*, 5 Esp. 181; *Briggs v. Peel*, 11 Jur. 611.

Relinquishment and agreement.—Where a mortgagor relinquishes his interest in the mortgaged property in favour of the mortgagee and also agrees to pay the Government dues on these properties till the transfer is recorded in the Collector's books, *held* that the instrument was a conveyance of which the amount of consideration is to be calculated under s. 24 of the Stamp Act, on the original mortgage amount plus the amount mentioned in the instrument, and the instrument is also an agreement to pay assessment until the entry is made in Collector's books and should also be stamped as an agreement, *Sinapaya v. Shivapa*, 15 Bom. 675.

Where by an instrument J. and S. relinquished their right in certain specified properties in favour of Eknath who is to discharge certain debts and to pay an annuity to J. and S., *held*, that the instrument is to be charged as a release as no interest is created in favour of J. and S. by the latter clauses and therefore not chargeable with stamp duty. *Eknath Gownde v. Jagannath S. Gownde*, 9 Bom. 417: 1885 P. J. 47.

Trust deed and exercise of the power of appointment.—Where a trustee bequeathed two lakhs of rupees for such charitable purpose as the executors will think fit and the public collected about another lakh and the whole amount was created into a trust fund, for the establishment, maintenance and management of a home for destitute female children and waifs of the Mahomedan community in Bombay, held that the instrument relates to distinct matters, as the fund collected by public is a settlement and the portion left by will is in exercise of a power of appointment. *In re Abdulla Haji Dawood Bowla Orphanage*, 35 Bom. 444 (447) : 13 Bom. L. R. 646 : 11 Ind. Cas. 982.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Instruments coming within several descriptions in Schedule-I.

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee [*Two Rupees in Bombay*] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

[**Bengal.**—*In section 6 of the said Act,—*

(1) *in the first paragraph, after the words and figure “in Schedule 1” the following shall be inserted, namely :—*

“or in Schedule 1A, as the case may be ;”

(2) *in the proviso, after the words “one Rupee” the words “eight annas” shall be inserted, and after the words “has been paid” the following shall be added, namely :—*

“unless it falls within the provisions of section 6A.”

Madras.—*In section 6 of the principal Act, after the word and figure “Schedule 1” the words, figure and letter “or in Schedule 1-A as the case may be” and after the words “one rupee” the words “or one rupee eight annas as the case may be” shall be inserted.*

Punjab.—*In Section 6—*

(1) *between the word “descriptions” and the word “in” shall be inserted the word “given” and after the word and figure “Schedule 1” shall be inserted the words, figure and letter “and Schedule 1-A,”*

(2) *in the proviso after the words “one rupee” the words “and eight annas” shall be inserted, and after the words “has been paid” the following shall be added, namely :—*

“unless it falls within the provisions of section 6-A.”

• **U. P.**—*In section 6 of the said Act—*

(1) *in the first paragraph, after the words and figure “in Schedule I” the following shall be inserted namely :—*

“or in Schedule 1A, as the case may be,”

(2) *in the proviso, after the words “one rupee” the words “and eight annas” shall be inserted, and after the words “has been paid” the following shall be added, namely :—*

“unless it falls within the provisions of s. 6-A.”]

NOTES.

See s. 7, paragraph 2 of Act I of 1879 and s. 4 paragraph 1 of Act XVIII of 1869.

Amendment.—The section is amended by Bengal Act III of 1922; Madras Act VI of 1922; Punjab Act VIII of 1922; Bombay Act II of 1932.

This section and the preceding section formed one section in Act I of 1879 which contained two paragraphs the 2nd one (*i.e.*, this section) containing exceptions to the rule in the 1st paragraph (*i.e.*, the preceding section in the present Act)

This section provides that where an instrument comes within the provisions of two or more articles in the schedule, subject to the provisions of the previous section, *i.e.*, not containing “distinct matters,” the instrument is to be charged with the highest of the duties leviable when such duties are different, (such instruments are to be

charged with one stamp), but a counterpart or duplicate is to be charged with a duty not exceeding one rupee.

The instrument is to relate to the same matter *i.e.*, the consideration should be the same for each but the stipulations contained in the instrument fall within two or more items in the schedule (8 Cal. 254 at page 259). In *Speyer Brothers v. The Commissioners of Revenue*, 1908 A.C. 92 : 77 L.J.K.B. 302 : 98 L.T. 286 : 24 T.L.R. 257 it was held that the crown is entitled to one duty only but may choose the higher duty.

Scope.—Where the contract notes, in addition to the intimation by the broker of the purchase or sale of the goods, contain a submission in writing by the buyer and seller to refer disputes to arbitration signed by the broker, as authorised agent of the parties, they fall within the provisions of s. 6 of the Stamp Act. *Hurdwary Mull v. Ahmed Musaji Saleji*, 13 C.W.N. 63 (67, 68) : 1 Ind. Cas. 371 : reversed on appeal in 40 Cal. 219 : 17 C.W.N. 395 : 18 I.C. 978 ; but see *Bombay Company Ltd. v. The National Jute Mills Co. Ltd.*, 39 Cal. 669.

By an instrument called a *patowa lease* (conditional usufructuary lease) which recited that R was indebted to H amounting to over two lakhs of rupees, and that R has taken another fresh loan amounting to Rs. 2,58,393-3 from H and is executing this *patowa lease* for a period of twenty years at a yearly rental of about Rs. 1,40,000 yearly, so that the whole debt would be paid off together with interest within the period of twenty years by a series of instalments extending over the term of lease. The instrument also contained the usual clauses in pottas ; on a reference from the Board of Revenue as to the amount of stamp payable, *held* that the loan is the consideration for the lease and the lease is the consideration for the loan, and that neither part of the arrangement would have been complete without the other. Therefore it is impossible to say that the instrument contains two distinct matters. *Clause (2) of s. 7 (now s. 6) relates only to transactions where the contract is essentially one transaction* and the instrument should be stamped as a mortgage only. *Ex parte Hill, In the matter of Reference from the Board of Revenue under s. 46, 8 Cal. 254 : 10 C.L.R. 33.* See also *Reference under the Stamp Act, (1 of 1879 s. 49) 17 All. 55 (57) ; Meenakshisundara Mudaliar v. Rathnasami Pillai*, 41 Mad. 959 (962, 963) : 8 L.W. 811 : 35 M.L.J. 489 : 1918 M.W.N. 811 ; See also *In re The Secretary to the Commissioner of Salt and Abkari and Separate Revenue*, 43 Mad. 365 : 38 M.L.J. 506 : 1920 M.W.N. 247 : 56 I.C. 154 F.B. overruling *Govindan v. Moideen*, 41 Mad. 469 : 33 M.L.J. 693, *Reference under Stamp Act*, 7 Mad. 203 F.B.

Penal clauses.—Where one party to a contract bound himself by a contract to compensate the other party to the contract, in case of his failure to perform his part of the contract and a specified amount was named in the contract, *held* by the majority of the Full Bench that the penal clause constitutes the instrument a bond, and it should be stamped accordingly. *Held* by Stuart C.J. that the penal clause does not constitute the instrument a bond, and the instrument is a mere agreement, *Reference by the board of Revenue, N. W. P. under Act I*

of 1979, 2 All. 654 F.B.; dissented from in *In the matter of Gajraj Singh*, 9 All. 585 F.B., and *Exparte Hill*, 8 Cal. 254: 10 C.L.R. 33.

Higher of the two duties to be paid.—Where an instrument contained two clauses (1), *viz.*, certain amount borrowed but treated as earnest money for supply of sugar, (2) hypothecation of Sugar Cane Crop, *held* that the instrument fell within two definitions; therefore, the document having fulfilled this double character, it fell within the principle recognised in this section, *In the matter of Gajraj Singh*, 9 All. 585 : (1887) 17 All. W.N. 190.

Where the instrument contained essentially one transaction, although it was partly a lease and partly a usufructuary mortgage, and the instrument answered two of the descriptions in the first schedule, the highest duty payable can only be levied: *Exparte Hill* 8 Cal. 254 : 10 C.L.R. 33; see also *Reference under Stamp Act*, s. 46, 17 All. 55. See also *Jalan Chand v. Assaram*, 33 I.C. 247 : 22 C.L.J. 22 (26) where the instruments were attested shahjogi hundis.

SECTION 6A.

6-A.—Bengal.—(1) *Notwithstanding anything contained in sections 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, has been paid.*

Payment of Bengal Stamp duty on copies, counterparts, or duplicates when that duty has not been paid on the principal or original instrument.

(a) *On the principal or original instrument as the case may be, or*

(b) *in accordance with the provisions of this section,*

The duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in Bengal, have been chargeable, under the Bengal Stamp (Amendment) Act, 1922, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A.

(2) Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon :

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.

6-A.—Punjab.—(1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Indian Stamp (Punjab Amendment) Act, 1922, has been paid—

Payment of the Punjab Stamp duty on copies counterparts, or duplicates when that duty has not been paid on the principal or original instrument.

- (a) on the principal or original instrument as the case may be, or
- (b) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in the Punjab, have been chargeable, under the Indian Stamp (Punjab Amendment) Act, 1922, with a higher rate of duty be the duty with which the principal or original instrument would have been chargeable under section 19A :

(2) Notwithstanding anything contained in section 35 or in any other law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon ;

Provided that a Court before which any such instrument, counterpart, duplicate or copy is produced, shall permit the duty chargeable under this section to be paid thereon and shall then receive it in evidences.

6A. U.P.—(Upto 31st March 1934). (1) *Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the United Provinces Stamp (Amendment) Act, 1932, has been paid.*

Payment of the United Provinces stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument.

(a) *on the principal or original instrument as the case may be, or*

(b) *in accordance with the provisions of this section, the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument, or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in the United Provinces, have been chargeable under the United Provinces Stamp (Amendment) Act, 1932, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A.*

(2) *Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon :*

Provided that a Court before which any such instrument, counterpart, duplicate or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.

6A. Burma.—(Upto 31st March 1935). (1) *Notwithstanding anything contained in section 4 or section 6 or in any other law, unless it is proved that the duty chargeable in Burma has been paid—*

Payment of Burma Stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument.

(a) *on the principal or original instrument, as the case may be, or*

(b) *in accordance with the provisions of this section,*

the duty chargeable on an instrument of sale, mortgage or settlement, other than a principal instrument, or on a counterpart, duplicate or copy of any instrument, shall, if the principal or original instrument would, when received in Burma, have been chargeable with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under s. 19A.

(2) *Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon ; provided that a court before which any such instrument, counterpart, duplicate or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.*

7. (1) No contract for sea-insurance (other than Policies of Sea-insurance. such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894), shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which

it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

NOTES.

See s. 7A of Act I of 1879 and Act VI of 1894.

The Merchant Shipping Act, 1894 is 57 and 58 vict. c.60.

This section enacts that a contract of Sea Insurance (subject to the exception mentioned), in order to be valid must be drawn up as an instrument of Sea Policy [See s. 2 (20)].

- (i) It must not be for a period exceeding 12 months.
- (ii) Particular risk must be mentioned.
- (iii) The amount must be mentioned.
- (iv) The names of the subscribers or underwriters must be mentioned.
- (v) It must be expressed in a sea-policy.

Where a contract arose on an acceptance by word of mouth of a letter quoting a rate of premium and on a declaration by word of mouth, not of the name of the steamer by which the goods are to be shipped, but of the expected value of the plaintiff's goods to be loaded on board of her, and the breach alleged was the defendant's refusal to issue a policy, *held*, no Court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties, or by failure to plead or argue the point at the outset. The enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of revenue officials, nor is the prohibition limited to cases for which a penalty is exigible. *The expression of an agreement for sea-insurance, otherwise than in a policy, is a thing forbidden in the public interest*, and the statutory insistence on a policy is no mere collateral requirement or prescription of the proper way of making such an agreement. To allow the suit to proceed in defiance of sec. 7 would defeat the provisions of the law laid down therein.

[The observations of the High Court in *Reference under the Stamp Act*, (30 Cal. 565) distinguishing a *contract* of sea insurance and a *policy* of sea insurance, seem to have been directed to another point

and the case of *Bhugwanlals v. Netherlands Insurance Co.*, (14 A.C. 83) was before the present Stamp Act.], *Surajmull Nagoremull v. The Triton Insurance Co., Ltd.*, 52 Cal. 403 : 29 C.W.N. 893 : 22 All. L.J. 105 : 1925 M.W.N. 257 : 49 M.L.J. 130 : 81 I.C. 545 : 1925 A.I.R. 83 (P.C.).

The fourth clause provides for the case when double duty will be chargeable.

Under-writers.—The person who assures is called the under-writer as he subscribes the policy. For other cases see under s. 2 (20) of this Act.

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of [one per centum] on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not :

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Governor General in Council.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be

liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

NOTES.

See s. 7B of Act I of 1879 as amended by Act XIII of 1887 and Act VI of 1910.

Amendments.—The words “one per centum” were substituted for the words “eight annas per centum” by s. 2 of the Indian Stamp (Amendment) Act, 1910 (6 of 1910).

This section was introduced by Act XIII of 1887 in order to enable the “Local Authorities” to raise loans by issuing bonds, debentures etc., on payment of duty specified herein.

• Local Authorities Loans Act 1879 (Act XI of 1879) was amended several times but the present Act is Local Authorities Loan Act, 1914 (Act IX of 1914) and consequently only the Local Authorities mentioned in the schedule to that Act can come under this section. See also the definition of “Local authority” as given there (s. 2.).

As to remission of duty on debentures issued by the commissioners of the port of Calcutta—See 1759 S.R. dated 14th Feb. 1896.

Local Authority.—“Local Authority” shall mean Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by, the Government with, the control or management of a Municipal or a local fund, S. 3 (38) of the *General Clauses Act* (Act X of 1897).

9. The Governor General in Council may, by rule

Power to reduce, remit or compound duties. or order published in the Gazette of India,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

[**Punjab Amendment.**—In clause (a) of section 9 between the word “chargeable” and the word “and” shall be inserted the following proviso, namely :—

Provided that with respect to instruments which are chargeable with duty under Schedule 1-A, such reduction or remission may, by notification, be granted by the Governor in Council].

- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

NOTES.

See s. 8 of Act I of 1879 and s. 16 of Act XVIII of 1869.

For notifications reducing and remitting such duties, see the General Statutory Rules and Orders and Appendix to this edition.

B.--Of the stamps and the mode of using them.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payments shall be indicated on such instruments, by means of stamps—

- (a) according to the provisions herein contained ;
or,

- (b) when no such provision is applicable thereto, as the Governor General in Council may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

- (a) in the case of each kind of instrument—the description of stamps which may be used ;
(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used ;
(c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

NOTES.

See s. 9 of Act I of 1879 and Ss. 5 (4), 40 and 50 of Act XVIII of 1869.

This section enacts that the duties are to be paid in stamps and the kind of stamp is to be specified in this Act or in the Rules framed under this section by the Governor General in Council.

The general rule is that an instrument should be written on stamp paper with the stamp of the requisite amount embossed or engraved on it. But there are exceptions.

Section 11 of the Act and *Rule 13* allow adhesive stamps to be used in certain cases. *Rules 13A* allows the use of adhesive stamps in cases where the proper stamp duty payable cannot be paid exactly by impressed stamps by reason of the fact that the necessary stamps are not in circulation.

Rule 17 lays down that certain instruments mentioned therein if stamped with an adhesive stamp, shall be stamped with special adhesive stamps such as stamps bearing the words "Insurance", "Notarial", "Foreign bill", "Advocate", "Vakil", "Attorney", "Agreement", "Broker's note", "Share Transfer" etc.

Rule 8 provides that certain instruments chargeable with a duty of one anna or two annas may have the stamp denoted by a coloured impression marked on a skeleton form of such instrument by the Controller of Printing, stationery and stamps at Calcutta, or the Superintendent of Stamps.

Rule 10 provides that certain instruments mentioned in Appendix II and Appendix III to the said rules may be stamped with labels affixed and impressed or perforated by the proper officer.

Postage stamps.—Four annas, or two annas or one anna or half anna can be used as adhesive stamps, and not postage stamps of higher or lower values. See *Rule 16 of the Rules* infra. Use of postage stamps of higher or lower values would be stamps of the proper description under s. 37 of this Act. See the case of *Venkataraman Ganap Hedge v. Shankar Narayan Sitaram Bhat*, 19 Bom. L.R. 862 : 2 I. C. 947.

Effect of rules.—The imposition of such excessive and minute details would be pitfalls to the unwary and would, by frequently invalidating documents, press harshly upon the illiterate classes, and overthrow thousands of honest transactions, without producing any such advantageous result, in the form of revenue to the state, as would compensate it for the discontent which would be occasioned. The Legislature has avoided such stringent details and it seems to us to have satisfied itself by legislating against defacement of the impressed stamp, and against such a mode of penning the document as would admit of that stamp being used for or applied to any other. *Dowlatram Harji v. Vilho Radhoji*, 5 Bom. 188 (F.B.).

Use of plain paper.—The rule authorising a party to use plain paper in addition to the stamp paper is an enabling rule, when the

whole of the deed can not be written on one side of the paper which bears the stamp. The rule does not prohibit writing on the reverse side. *Reference under Stamp Act, s. 46, 7 Mad. 176 F.B.*

The effect of Government Notification No. 2955 dated 1-12-1882, is not to prohibit pro-notes, other than those chargeable with a duty of 6, 10 or 12 annas being written on impressed sheets bearing the word "Hundi" thereon, *Radha Bai v. Nathu Ram*, 13 All. 66 : (1890) All. W.N. 238. See also *Hill v. Nihal Chund*, 21 P.R. 1891.

The Rules under s. 9 of the Stamp Act make it compulsory that promissory notes should be on impressed sheets and that promissory notes chargeable with a duty of 6, 10, or 12 annas must be written on hundi paper, but thereby they do not imply any prohibition against other promissory notes also being so written as "hundi" papers impressed sheets. *Bank of Madras v. Subbarayah*, 14 Mad. 32.

A pro-note written on two pieces of stamp paper sewn together, is not properly stamped being in contravention of a rule issued by Governor General in Council under Act I of 1879, *Samad Mir v. Brij Lal*, 73 P.R. 1886. Several sheets of stamped paper may be joined together subject only to the proviso that a portion of the instrument shall be written on each sheet so used, *Sarada Nath v. Gorinda Chandra*, 23 C. W. N. 534 : 29 C. L. J. 305 : 51 Ind. Cas. 88. See also *In re Netherlands Trading Society*, 4 L.B.R. 320.

Use of adhesive stamps.

11. The following instruments may be stamped with adhesive stamps, namely :—

- (a) instruments chargeable with the duty of one anna [or half an anna], [*two annas in Bombay*] except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
- (b) bills of exchange, and promissory notes drawn or made out of British India ;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court ;
- (d) notarial acts ; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

NOTES.

See s. 10 of Act I of 1879 and s. 5 of Act XVIII of 1869 and s. 7 of the Stamp Act, 1891 (54 & 55 vict. C. 39).

The section specifies the instruments which may be stamped with adhesive stamps.

Amendments.—The words “half an anna” were inserted by s. 3 of the Indian Stamp (Amendment) Act 1906 (5 of 1906).

The word “cheques” in clause (b) of s. 11 has been omitted by sec. 5 of the Indian Finance Act V of 1927.

As to the enrolment of legal practitioners in the North-West Frontier Province, see s. 9 of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code. See Article 30 of this Act and Rule 15 of the Stamp Rules, 1925, *infra*.

• **Local Amendment.**—The words “two annas” have been inserted for the words “one anna” in cl. (a) by Bombay Act II of 1922.

“May.”—The word “must” or the word “shall” may be substituted for the word “May” but only for the purpose of giving effect to the intention of the Legislature and in the absence of proof of such intention, the word “May” must be taken to be used in its natural, therefore, in a permissive, and not in an obligatory sense. *Delhi and London Bank Ltd. v. Orchard*, 4 I.A. 127; 3 Cal. 47; *Moran v. Chairman of the Motihari Municipality*, 17 Cal. 329 (335); *Vasudevacharya v. Municipality of Sholapur*, 22 Bom. 384 (387).

The words “drawn or made out of British India” in cl. (b) of s. 10 of the stamp Act, 1879, (now s. 11) apply to the entire clause, *Devaji v. Ramakrishnaiah*, 2 Mad. 173.

Though a promissory note payable on demand is to be stamped according to this section, with an adhesive stamp, still if it is stamped with an adhesive stamp of a higher value, it can not be said to be improperly stamped, *Sadik Ali v. Rani Kanno*, (1885) 5 All. W.N. 317.

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

NOTES.

See s. 11 of Act I of 1879, s. 33 of Act XVIII of 1869 and s. 8 of the Stamp Act, 1891 (54 and 55 vict., chap. 39).

This section provides as to the mode of cancellation of a stamp and also the effect of non-cancellation.

Application.—The 1st paragraph of s. 11 (now s. 12) applies to cases in which the instrument chargeable with duty may be stamped after execution. Therefore a receipt bill of a Government servant, which is required to be stamped before or at the time of its execution is not an instrument contemplated by 1st paragraph to s. 11 (now s. 12) of Stamp Act of 1879, *Queen Empress v. Rahat Ali Khan*, 9 All. 210 : (1887) All. W.N. 5.

A document begun on the reverse side on a stamp paper does not fall within the prohibitory words §§. 12, 13, 14 of the Stamp Act. It is not necessary that the document should commence on any particular side of the paper, the only thing prohibited by the section being the writing on the stamp paper in such a manner as to deface the stamp or to render a second use of the stamp impossible. *Dowlat Ram Harji v. Vitho Radhoji*, 5 Bom. 188 F.B.

Mode of cancellation.—Clause 3 of s. 12 of the Stamp Act, 1899 points out as a guide how cancellation may be effected, *Virbhadrappa v. Bhimji*, 28 Bom. 432 (433) : 6 Bom. L.R. 436. A cancellation of a stamp by a person may be done sufficiently if he writes his name across it; it is not necessary that he should also put the date on it. *Kripa Ram v. Baru Mal*, (1906) A.W.N. 95: 3 A.L.J. 326; but see clause (3) of the present section. A stamp may be effectually cancelled by merely drawing a line across it. *Mahadeo Koeri v. Sheoraj Ram Teli*, 41 All. 169: 17 All. L.J. 19: 52 Ind. Cas. 974. The adhesive stamp on pro-note may be effectively and sufficiently cancelled by drawing lines on it in different directions and stretching beyond the edge of the stamp on the paper on which the pro-note was written but the sufficiency depends on the facts of each case. *Amir Mirja Beg. v. Kedar Nath*, 15 O.C. 58: 15 I.C. 202. The question whether a stamp has been duly cancelled is to be decided on facts of each individual case. *Mela Ram v. Brij Lal*, 148 P.R. 1919: 54 I.C. 976. Drawing lines across an adhesive stamp is

sufficient compliance with the provisions of s. 12 (3) of the Indian Stamp Act, 1899. *The Firm Kishori Lal Banarsi Das v. The Firm Ram Lal Tekchand*, 3 L.L.J. 170: 60 I.C. 559^o. See also *Piran Ditta v. Mangal Singh*, 103 P.R. 1908: 207 P.W.R. 1908.

The criterion as to cancellation of a stamp is whether an ordinary man on seeing the stamp, would arrive at the conclusion that the stamp had already been used, *Pessumal v. Gaganmal*, 15 S.L.R. 34: 66 I.C. 5: 1921 A.I.R. 77 (Sind.) A hundi was made out by the defendant and stamped with the proper stamp of one anna and was taken by him to the plaintiff's son who received it and cancelled it by putting a date on it; *held* that as the cancellation took place at the time it was delivered it is sufficient as cancellation may be by the direction, express or implied, of the person affixing the stamp. *Bhowanji Harbhun v. Devji Punja*, 19 Bom. 635; *S. A. Rati v. Caramalli Fasal*, 14 Bom. 102 (111).

By an illiterate person.—A cross mark on the stamp by an illiterate person indicating his acknowledgment, is an effective cancellation of the stamp. *Kola Sai v. Balai Hajam*, 3 Rangoon 39: 88 I.C. 933: 1925 A.I.R. 209 (Rangoon).

The signature of the executant of a promissory note who is illiterate, made by the scribe on the adhesive stamp under his direction on that behalf and in token of cancellation thereof, is sufficient compliance with law as to cancellation of a stamp on a promissory note. *Thakari Mallah v. Ram Tahal Tewari*, 52 All. 489: 1930 A.L.J. 559: 127 I.C. 527: 1931 A.I.R. 57 (All).

Lost Hundi.—If a hundi is lost a presumption arises under s. 118 (f) of the Negotiable Instruments Act that the hundi was duly stamped which includes a presumption that it was duly cancelled. *Atmaram Mohandal and Sons v. Natandas Devulajal and others*, 126 I.C. 741: 1930 A.I.R. 4 (Sind).

Not proper cancellation.—Mere drawing of two parallel lines across a receipt stamp affixed to an instrument, does not amount to cancellation either under section 11 of Act I of 1879 or s. 12 (3) of the Stamp Act 1899, *Virbhadrappa v. Bhimaji*, 28 Bom. 432: 6 Bom. L.R. 436. But see *contra*, *Piran Ditta v. Mangal Singh*, 108 P.R. 1908: 207 P.W.R. 1908; *S. A. Rati v. Caramalli Fasal*, 14 Bom. 102 at p. 111. Drawing a line with a blue pencil, is not proper cancellation, *Salamalai v. Vadamalai*, 23 M.L.J. 273: 12 M.L.T. 122: 16 Ind. Cas. 96.

Time of cancellation.—This section provides that an adhesive stamp is to be cancelled at the time of the execution and in case of instruments already executed, such as foreign bills, at the time when the stamp is affixed.

Cancellation on a subsequent date.—Putting the date across the stamp by a third person on a date subsequent to the date on which the bill has been drawn, is not proper cancellation, *Dayaram v. Chandumall*, 27 Bom. L.R. 1118 (1122): 90 I.C. 689: 1925 A.I.R. 520 (Bom.).

Effect of non-cancellation.—See s. 63 of this Act. A hundi bearing stamp not properly cancelled, can not be given in evidence even though it happened through the negligence of some subordinate officers in the press of business. *People's Bank of India Ltd. v. Abdul Karim*, 10 P.R. 1912: 75 P.L.R. 1912: 65 P.W.R. 1912: 14 I.C. 512. See also *Sundar Das v. The People's Bank of India Ltd., Rawalpindi Branch*, 169 P.L.R. 1912: 272 P.W.R. 1912: 16 Ind. Cas. 834; *Barham Deo v. Ramkishun*, 20 M.L.T. 184: 60 Ind. Cas. 652: 20 L.T. 184: 1921 A.I.R. 318 (Patna).

If the stamp is not cancelled, then the effect is the same as if the instrument is not stamped. *Solamalai v. Vadamalai*, 23 M.L.J. 273: 12 M.L.T. 122: 16 Ind. Cas. 96. But if evidence can be adduced independently of the instrument, such evidence can be given of the consideration as in a case of a promissory note, provided the creditor has not parted with it or lost it or endorsed the bill or note under such circumstances as to make the debtor liable to some third person. *Banarsi Prosad v. Fazal Ahmed*, 23 All. 298: 3 All. L.J. 25: (1906) A.W.N. 9. See also *Ram Sarup v. Jasadha Kunwar*, 34 All. 158 (164); *Srinath Das v. Angul Singh*, 7 All. L.J. 45; *Virbhadrappa v. Bhimaji Balaji*, 6 Bom. L.R. 436: 23 Bom. 432 F.B.

A court which passes a decree on an instrument bearing a stamp which is not cancelled, acts contrary to law. *Maung Ba Kywan v. Mu Kye Kyee*, 2 L.B.R. 103.

Non-cancellation of one of the stamps.—If one of the two one-anna stamps on a promissory note is not duly cancelled as required by s. 12 (1) (b) of the Indian Stamp Act, then the promissory note is to be deemed as unstamped, one one-anna stamp alone being insufficient for the promissory note; therefore the promissory note is inadmissible in evidence. *Tun Hlaing v. Ma Keha Ihu*, 1929 A.I.R. 270 (Ran.): 126 I.C. 538.

Objection when can be raised.—An objection as to cancellation of the stamp on a hundi at the time of execution and its admissibility can be raised at any stage of the suit, on the ground it was not properly stamped. *Sunderdas v. The People's Bank of India, Rawalpindi Branch*, 169 P.L.R. 1912: 272 P.W.R. 1912: 16 I.C. 834 but if the instrument was admitted in evidence without demur or objection, such objection cannot be raised at a late stage. *Piran Ditta v. Mangal Singh*, 108 P.R. 1908: 207 P.W.R. 1908. See also cases under s. 35 and 36 of the Stamp Act.

13. Every instrument written upon paper stamped

Instruments stamped
with impressed stamps
how to be written.

with an impressed stamp shall
be written in such manner that
the stamp may appear on the face
of the instrument and cannot be used for or applied to
any other instrument.

[NOTES.

See s. 12 of Act I of 1879 and s. 3 of the Stamp Act, 1891 (54 and 55 vict. c. 39).

This section requires that an instrument written upon a paper bearing an impressed stamp must be so written (1) that the stamp appears on the face of the instrument, and (2) that the stamped paper can not be used for any other purpose.

On the face of the instrument.—"When the face of a deed or document is mentioned, no particular side or sheet of the parchment or paper, on which the deed or document is written, is thereby indicated. The last line on the second side, or, if the deed or document consist of more sheets than one, the last line on the last side or sheet, if part of the text or body of the instrument, is deemed to be as much upon the face of it as the first line on the first side or sheet. Ordinarily if the instrument be of sufficient length, both sides of the paper are written upon. The 12th section of Act I of 1879 does not say that the instrument must commence on the side on which the stamp is impressed, or that only one side may be written upon We have not been able to discover any decision of the English Courts to the effect that the expression "face of the instrument" is to be interpreted as requiring that the document should commence on the side on which the stamp is impressed, or that both sides of the paper or parchment may not be written upon, or as having any different meaning than it was previously understood to have. Rules prohibiting writing on the reverse side were considered as adding more stringent provisions than the section warrants. *Dowlatram Harji v. Vitho Radhoji*, 5 Bom. 188 (195, 196) F.B. See also *Reference under Stamp Act*, s. 46, 7 Mad. 176.

Several stamps.—Where the impressed sheets were used to make up the necessary stamp and the stamps were marked with the word "hundi" and the instrument was a promissory note, but the instrument was written on one of the stamped papers, the other being pasted on to it. *held*, that the instrument not having been written on both the stamped sheets as required by the Rules, and s. 13, the instrument is not duly stamped and it is therefore inadmissible in evidence. *Messrs. Mohondal Kunialal v. Kasarimull Chordiya*, 15 M.L.T. 203: 23 Ind. Cas. 110. A hundi written on two impressed stamps and sewn together contrary to the rules of the Governor-General in Council, is not duly stamped and therefore not admissible in evidence. *Samad Mir v. Brjlat*, 73 P.R. 1886.

Where a promissory note for less than Rs. 5,000 was executed in British India and was payable otherwise than on demand within a year but was written on an impressed sheet bearing the word "hundi," *held* that the instrument was properly stamped, *Hill v. Nihal Chand*, 21 P. R. 1891; *Radha Bai v. Nathu Ram*, 13 All. 66: (1890) 10 All. W.N. 238; *Bank of Madras v. Subbarajah*, 14 Mad. 32.

Hundi.—A Bill of Exchange payable otherwise than on demand must be written on paper bearing an impressed stamp of the value

of six annas, otherwise it can not be said to be "duly stamped" *Radhakant Shaha v. Abhoy Churn Mitter*, 8 Cal. 721. A hundi for a sum of Rs. 380, payable otherwise than on demand, can not be stamped with an adhesive stamp, *Deraji v. Ramakrishnaiah*, 2 Mad. 173.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Only one instrument to be on same stamp.

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

NOTES.

See s. 13 of Act I of 1879.

This section lays down that the stamped paper once used as an instrument in writing must not be used again, except for the purpose of endorsement.

Addition of the name of a co-arbitrator.—Addition of the name of a co-arbitrator in an instrument of reference to arbitration wherein one arbitrator was named but before he has accepted arbitration, does not convert the 1st instrument into a 2nd instrument within the meaning of s. 14 of the Stamp Act, *Sham Das v. Khiman Mal*, 8 S.L.R. 302 : 29 I.C. 602.

Material alteration.—A material alteration must be one which alters or attempts to alter the character of the instrument itself and which affects or may affect the contract which the instrument contains or is evidence of, *Suffell v. Bank of England* (1881) 7 Q.B.D. 270.

Any material alteration in an instrument even with the consent of the parties vacates the original instrument and the instrument so altered is a new instrument and is liable to a fresh stamp duty unless the alteration is made before issue, or in order to correct a mistake, or to supply an omission and in furtherance of the original intention of the parties. If it is not stamped afresh, it is an unstamped instrument and can not be used in evidence, *Tribeni v. Sahu*, 11 Bur. L.T. 257 : 50 I.C. 517.

When bills were altered with the consent of all the parties such altered bills are required to be stamped under s. 14 of the Stamp Act, and in case of failure to stamp the bills, the plaintiff suing on them

is to be non-suited. *The International Banking Corporation v. H. Pestonji & Co.*, 27 Bom. L.R. 31 : 49 Bom. 351 : 86 I.C. 115 : 1925 A.I.R. 187 (Bom.) overruled in *H. Pestonji & Co v. Cox & Co.*, 55 I.A. 353 : 52 Bom 589 : 26 A.L.J. 1245 : 49 C.L.J. 32 : 1928 M.W.N. 881 : 113 I.C. 124 : 5 O.W.N. 706 : 1928 A.I.R. 231 (P.C.). Where it was held that an alteration of the due date on the face of the bill would be material alteration but an alteration in the marginal note which is altered from time to time whenever the due date of the bill is extended is not a material alteration. Therefore, when a due date is extended by alteration of the due date noted on the margin the altered bill is not a new bill and need not be stamped afresh. The case of *The International Banking Corporation v. H. Pestonji & Co.*, 1927 A.I.R. 13 (Bom.) approved.

An alteration as to area of land pledged is a material alteration, *Ganga Ram v. Chandan Singh*, 4 All. 62. An alteration in a mortgage bond by altering the area in the land mortgaged is a material alteration, and no suit can be based on that mortgage, *Mangal Sen v. Shankar Sahni*, 25 All. 580 F.B.

In order to decide whether an alteration is material, it is not merely the actual final effect of the alteration on a consideration of all the facts and the law which is to be considered. An alteration which may affect the contract which the instrument contains is also material. *Namder Joyram Khole v. Swaleshi Vyapari Mandali, Ltd.*, 28 Bom. L.R. 944 : 93 I.C. 721 : 1926 A.I.R. 491 (Bom.).

Where a promissory note was altered by altering the rate of interest from one to two per cent. per month and also by addition of the second endorsement which made it appear that on 10th August, 1880, a sum of Rs. 20) was paid on account of interest, held that the alteration in the instrument was a material alteration which avoided the whole note, and held further that "an alteration which vitiates an instrument must be such as to cause the instrument on the face of it to operate differently from the original instrument." *Oodeychand Boodaji v. Bhaskar Jagomath*, 6 Bom. 371. See also *Anandji Visram v. Nadiad Spinning and Weaving Company*, 2 Bom. 231. (A case of altering the articles of association of a Company).

Any change in a document varying the liability under it in any way is a material alteration. An addition by a party on an attested document, although not required by law to be attested, of another attesting signature added to it by a man who has not in fact, witnessed the execution of it by the obligor, is a material alteration which avoids the instrument. *Sitarani Krishna v. Daji Deraji*, 7 Bom. 418.

A material alteration in a bond is, if fraudulently made, sufficient to render the bond void.

A party who has the custody of an instrument made for his benefit is bound to preserve it in its original state, and any material alteration of it will vitiate the instrument. Where a person brings a suit upon an altered instrument, no court would allow an amendment to make him to succeed upon it in its original state. *Gogun*

Chunder Ghose v. Dhuronidhur Mundul, 7 Cal. 616 : *Parbati Charan Mookherjee v. Amarendra Nath*, 53 Cal. 418 : 96 I.C. 97 : 1926 A.I.R. 831 (Cal.).

But where the date of a written acknowledgment has been altered, oral evidence to prove the date is not admissible in evidence. *Sayad Gulamali Dattura v. Miyabhai Mahomadahai*, 26 Bom. 128.

Where a mortgage bond was altered by inserting a condition making the whole sum payable upon default of payment of any instalment and doubling the rate of interest, *held* that the document has been altered materially and the suit on the bond must be dismissed, *Christcharlu v. Karibasayya*, 9 Mad. 399 F. B. See *Ramayya v. Shanmugam*, 15 Mad. 70, which was a case of forged attestation, See also *Govindasami v. Kuppusami*, 12 Mad. 239, where the date of the bond was altered and although the alteration did not affect any one and the period of limitation from the old date has not expired, it was held that the bond was void. See also *Amirtham Pillai v. Nanyah Gownden*, 26 M.L.J. 257 : 1914 M.W.N. 250 : 1 L.W. 243 : 23 I.C. 464.

Where a promissory note purported to be executed by two persons but it was found that the signature of one of them is forged, *held* that the document is not wholly void and the plaintiff can succeed as against the real executant, *Madani Pillai v. Attunarayana Pillai*, 1925 A.I.R. 925 (Mad.).

An acknowledgment in a *hatchitta* was materially altered and it was found that an entry relating to interest was subsequently interpolated on a subsequent date. A suit was brought to recover the amount acknowledged but no reliance was placed on the *hatchitta* nor any interest was asked for, *held* that the plaintiff was not suing upon any instrument which was materially attested. The entry on which he relied and which was not altered was put in merely as evidence of defendant's liability and there is question as to the genuineness of that portion, and the plaintiff is entitled to a decree. *The authorities discriminate between cases in which altered document is the foundation of a claim, and where it is merely used as evidence*, *Harendra Lal Ray Chowdhury v. Uma Charan Ghosh*, 9 C.W.N. 695 ; *Gour Chandra Das v. Prasanna Kumar Chandra*, 33 Cal. 812 : 3 C.L.J. 363 : 10 C.W.N. 783.

The principle is that where a course of action for recovery of an advance exists independently of any instrument which may have been given for the advance (and which may have been altered in a material particular), the fact that the instrument is vitiated by fraud is no ground for dismissing the plaintiff's claim for the recovery of the advance. *Tapiram v. Jugal Kishore*, 21 N.L.R. 169.

The principle of English Law that the material alteration of a document by a party after its execution without the consent of the other party renders it void, has been followed in India. This rule does not apply to documents which are not the foundation of a plaintiff's claim, but are merely evidence of a defendant's pre-existing liability, *Atmaram v. Umedram*, 25 Bom. 616 : 8 Bom. L.R. 213.

Alteration with consent.—A material alteration of a deed after execution does not vitiate a deed if it is made with the consent of all the parties, *Isac Mahomed etc. v. Bai Fatma etc.*, 10 Bom. 487.

Admissibility of an altered bond.—The plaintiff can not succeed on a bond which has been materially altered, but must prove an agreement independent of the contract in writing, *Dula Mia v. Maulvi Abdul Rahaman*, 28 C.W.N. 70 : 1924 A.I.R. 452 (Cal.).

A material alteration in a written acknowledgment of his liability by the debtor which was intended to save the bar of limitation does not render the acknowledgment void, *Amaram v. Umedram*, 25 Bom. 616 : 3 Bom. L.R. 213.

No stamp for the second transaction.—The plaintiff lent a sum of Rs. 50 to the defendant and obtained a pro-note for the amount. A further advance amounting to Rs. 150, was made subsequently and the pro-note (the only pro-note executed) was altered to Rs. 200 in the place of Rs. 50 and changing the rate of interest from 3 p.c. to 4 p.c.; held that the alteration is a material alteration and represented two distinct transactions, for the second of which no stamp was paid and the stamp on the promissory note must be considered to have been used twice in contravention of s. 14; hence the pro-note should be deemed unstamped under s. 15 of the Stamp Act. *Mauing Myo and others v. Ma Yyin and others*, 1928 A.I.R. 263 (Rangoon): 114 I.C. 289.

Addition of a new name.—If an alteration in a hatchitta be by addition of a new name, such addition will not affect the suit for money if the plaint be for original consideration, *Narsingdas Agarwala v. Sheikh Bhartoo*, 53 C.L.J. 219; See also *Sitaram Krishna v. Daji Devji*, Bom. 7 418.

Addition of new terms.—Where a complete lease was executed, stamped and registered, a second lease executed with a view to alter the first and substitute new terms for the old terms and was not merely a paper which is to be taken in connection with the first paper that had already been stamped, in order to supply what is deficient in that paper, held that the second deed is to be stamped as a new deed, *Byjnath Dutt Jha v. Musst. Putshee Dobain*, 20 W.R. 36. But where the intention is that the 1st and the 2nd deeds are both to be equally binding and be regarded as one deed and both of them are contingent upon the coming to pass of other events which were at the time of execution events in future, the 2nd deed is to be stamped with duty of Re. 1 only. *Reference by the Board of Revenue*, 37 All. 159 F.B. : 13 A.L.J. 96 : 27 I.C. 731 F.B and *Reference by the Board of Revenue*, 37 All. 264 F.B. : 13 All. L.J. 335 : 28 I.C. 348 F.B.

Power of Court to correct instruments.—Where owing to mutual mistakes the document did not represent the true contract between the parties, the court can admit evidence in proof of the real terms of the contract and grant a decree on the basis of the real contract ascertained from evidence. The court can also correct the terms of the document if it is proved to its satisfaction that any of the terms in the contract were inaccurate owing to mutual mistake, *Ladha Singh v. Munshiram Agarwala*, 31 C.W.N. 747 : 104 I.C.

559 : 1927 A.I.R. 605 (Cal.) See also *Bissessar Singh v. Bhagwan Das*, 1880 All. W.N. 42.

Not material alteration.—An alteration of the due date on the face of a bill of exchange would be material alteration but an alteration in the marginal note, which is altered from time to time whenever the due date of a bill of exchange is extended from time to time, is not a material alteration, *H. Pestonji & Co. v. Cox. & Co.*, 55 I.A. 353 : 52 Bom. 589 : 26 A. L. J. 1245 : 1928 M.W.N. 881 : 5 O.W.N. 706 : 49 C.L.J. 32 : 113 I.C. 124 : 1928 A.I.R. 231 (P.C.); approving the case of *H. Pestonji & Co.*, 50 Bom. 656 : 28 Bom. L.R. 1264 : 99 I.C. 489 : 1927 A.I.R. 13 (Bom.). Where the figures for the year in the date of the promissory note were struck out and a new year substituted and the names of the managing agents, signatories to the note, appeared below, *held* it was merely a correction of a clerical error and not a material alteration, *In the matter of Jajodia Cotton Mills, Ltd.*, 31 C.W.N. 683 : 1927 A.I.R. 612 (Cal.).

The interpolation of the name of a witness as an attesting witness subsequent to the execution of a document which is not required by law to be attested is not a material alteration within the meaning of s. 464 of the Indian Penal Code, *Surendra Nath Ghose v. Emperor*, 38 Cal. 75. The interpolation of the name of a witness in a document which need not be attested is not a material alteration that would render the document void, *Mohesh Chatterjee v. Kamini Kumari Debja*, 12 Cal. 313. See also *Venkatesh Prabhu v. Subraya*, 15 Bom. 44.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.
Instruments written contrary to s. 13 or 14 deemed unstamped.

NOTES.

See s. 14 of Act I of 1879.

This section prescribes the penalty to be attached in case of non-compliance with the provisions of s. 13 and s. 14 that is, such instruments shall be deemed to be unstamped and as such inadmissible. But the defect may be remedied on payment of penalty under sections 35, 40 and 41. Sec. 39 (2) and the proviso to sec. 40 (1) confer a discretionary power on the Collector to refund the whole penalty levied on the ground that an instrument was written in contravention of sections 13 and 14.

A deed of release bearing a stamp of one rupee and written upon a stamped paper on which a deed of conveyance was written, contravenes s. 13 (now S. 14) of the Stamp Act, and therefore must be deemed to be unstamped, *Reference under Stamp Act s. 46*, 11 Mad. 40. See also *Dowlatram Harji v. Vilho Radhoji*, 5 Bom. 188; *Prahlad Lakshan Rav Nikane v. Vilhu*, 17 Bom. 687.

Endorsements.—An endorsement of transfer of a money bond

which is in itself properly stamped, is chargeable with duty when written upon the bond, and contravenes s. 13 (now S. 14) of the Stamp Act. Therefore the endorsement must be deemed to be unstamped, s. 34 and the proviso to that section (ss. 35 and 36) therefore come into operation, *Prahlad Lakshman Rav Nikane v. Vitlu*, 17 Bom. 687. (The case of *In the matter of Hunnappa*, 13 Bom. 281 was considered and construed to mean that the power of Collector to set the matter right by recovery of penalty is not taken away). See also *Shankar Lal v. Sukhrani*, 4 All. 462: (1882) 2 All. W.N. 108.

But where a Policy of Insurance was transferred in favour of a bank by endorsement and re-transferred to another by a second endorsement on the said Bond, and there was an assignment by the assured to Messrs. B. R. S. & Co., held that as the 1st and 3rd are assignments by way of collateral security without consideration, no money having really been advanced, these are not to be charged with duty under Schedule I Art. 20 of Act XVIII of 1869, and the 2nd endorsement is chargeable with duty. *In the matter of Thomson's Policy*, 3 Cal. 347. (But now transfers are governed by Art. 2 and under that article transfers by endorsement are exempted). A bond and a guarantee form one transaction and can be written on the same paper. *Dowlatram Harji v. Vitlu Radhoji*, 5 Bom. 188 (193).

A conveyance and a deed of release are distinct matters requiring two instruments, hence writing both these instrument on the same paper contravenes this section, *Reference under s. 46 of the Indian Stamp Act*, 11 Mad. 40.

Renewed Bill of Exchange. *Extension of time.*—Where Bills of Exchange payable to order were drawn in England and made payable in 90 days; but subsequently time was extended by four months from the due date of the bills and an intimation was sent. The bills were then re-presented to the defendants for acceptance and the defendants re-accepted them. A suit was then brought on the renewed bills, held, that the original bills having been extinguished and the new bills having been substituted in their place, the new bills were required to be stamped under s. 14 of the Stamp Act and as these did not bear fresh stamps they could not be sued upon. When a second bill is taken in lieu of the prior bill and the suit on the latter bill is ineffectual for some reason or other, a suit cannot lie on the prior bill, *The International Banking Corporation v. H. Pestonji & Co.*, 49 Bom. 351: 27 Bom. L.R. 31: 86 I.C. 115 overruled by P.C. in *H. Pestonji & Co. v. Cox & Co.*—*infra*. See also *The International Banking Corporation v. Lakshmidas Premji*, (per Buckland J.) July, 1925 (unreported). See *Cox & Co. v. H. Pestonji & Co.*, 50 Bom. 656: 28 Bom. L.R. 1264: 99 I.C. 489: 1927 A.I.R. 13 (Bom.) by the Judicial Committee in *H. Pestonji & Co. v. Cox and Co.*, 55 I.A. 353: 52 Bom. 589: 26 A.L.J. 1245: 30 Bom. L.R. 1503: 49 C.L.J. 32: 1928 M.W.N. 881: 5 O.W.N. 706: 113 I.C. 124: 1928 A.I.R. 231 (P.C.). where it was held that alteration in the date put on for office purposes was not alteration and there was no new bill at all.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, Denoting duty depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, by denoted upon such first-mentioned instrument, be endorsement under the hand of the Collector or in such other manner (if any) as the Governor-General in Council may by rule prescribe.

NOTES.

See s. 15 of Act I of 1879 ; Art 16 Sch. II of Act XVIII of 1869, and s. 11 of the Stamp Act, 1891 (54 and 55 vict. C. 39).

This section contemplates instruments to be chargeable with duty or their exemption from duty in relation to another instrument which has been properly stamped. The method is by an application to the Collector who, upon production before him, makes an endorsement upon the instrument to be charged either under his own hand or in such a manner as the Governor-General in Council may by rule prescribe.

C.—Of the time of stamping Instruments.

17. All instruments chargeable with duty and Instruments executed executed by any person in in British India. British India shall be stamped before or at the time of execution.

NOTES.

See s. 16 Act I of 1879 and s. 28 of Act XVIII of 1869.

This section lays down the time of stamping an instrument executed in British India. Sections 17, 18, 19 and 19A lay down the time of stamping an instrument. Under Section 17 Instruments executed in British India are to be stamped before or at the time of the execution. Under Section 18 Instruments other than bills, cheques and notes executed out of British India are to be stamped within 3 months after they are first received in British India. Under Section 19 (bills of exchange payable other-wise than on demand) and promissory Notes drawn or made out of British India are to be stamped by the first holder thereof in British India at any time before he deals with the same in any way. Section 19A provides for the payment of additional duty on instruments under the various provincial amendments.

Time of execution.—As to definition of the term *executed* see s. 2 (12) *supra* and the cases noted thereunder. A pro-note was

signed by the executant and was stamped and the stamp cancelled immediately, *held* that the signing and stamping were continuous acts in the same transaction and the pro-note was stamped at the time of execution within the meaning of s. 16 (now s. 17), *Moti Lal v. Jugmohon Das*, 6 Bom. L.R. 699; *Surij Mull v. Hudson*, 24 Mad. 259; See also *Bhawanji Harblum v. Devji Punja*, 19 Bom. 635; *Jawahir Singh v. Lachman Das*, 3 O.C. 195; *Humayun v. Wajid Ali*, 11 O.C. 152; *Narayan Chitti v. Karuppathan*, 3 Mad. 251.

Duty of Court to enquire as to the time of execution.—The Civil Court is not bound nor is it at liberty to allow the parties to go into evidence to show at what time the instrument was stamped, *Kali Churn Das v. Nobo Kristo Pal*, 9 C.L.R. 272; *Sreemutty Noor Bibee v. Shaikh Ramzan*, 24 W.R. 198.

Stamped.—The word “stamped” in s. 17 of the Stamp Act means stamped not only with a stamp of the required amount but also with the kind of stamp prescribed. *Motilal v. Jugmohondas*, 6 Bom. L.R. 699.

Subsequent stamping.—A receipt was stamped subsequent to execution but before it was produced in Court, *held* that it was not sufficiently stamped and cannot be admitted in evidence, *Jethibai v. Ram Chandra Narottam*, 13 B.m. 484. *This was under the old Acts, but clause (b) in the proviso to s. 35 makes an unstamped receipt admissible in evidence on payment of penalty.* A bond stamped after grantor's death is valid against the heir. The representative or the kindred of the deceased are not third parties within the meaning of Regulation XVIII of 1827. *Raghia v. Dharma Jhatu*, 1 B.H.C. 52. Under s. 15 of the stamp Act, 1891 (54 and 55 vict c. 39), an instrument could be stamped subsequent to execution on payment of penalty and the unpaid duty.

Penalty.—Where no stamp duty is leviable on the instrument under the Stamp Act in force at the time of execution, no penalty can be recovered under Act I of 1879. *Reference under Stamp Act*, s. 46, 14 Mad. 255. See also *Narayan Chetti v. Karuppathan*, 3 Mad. 251.

18. (1) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, or promissory note, may be stamped within three months after it has been first received in British India.

Instruments other than bills, and notes executed out of British India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such

manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

NOTES.

See s. 17 of Act I of 1879.

Amendment.—In sub-section (1) the word “cheque” has been omitted under the provisions of sec. 5 (3) of Act V of 1927.

This section lays down that instruments *other than* bills of exchange or promissory notes are to be stamped within 3 months after being first received in British India.

Scope.—S. 18 deals only with those documents which, although being executed in places other than British India, attracts duty according to the law in British India, *Herbert Francis v. Nawab Saiyid Muhammad Akbar*, 7 Patna 99 : 105 I. C. 502 : 1928 A. I. R. 113 (Patna) : 9 P.L.T. 221. See also *Ali Mohammad v. Jagannath Prasad*, 26 A.L.J. 823 : 115 I.C. 453 : 1928 A.I.R. 666 (All) where it was held that this section does not cover the case of a promissory note executed out of British India. They are covered by s. 19 See cases under s. 3 *supra*.

British India.—“British India” shall mean all territories and places within His Majesty’s dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India, [*General Clauses Act* (Act X of 1897) s. 3 (7)]; and includes the Agency Tracts of Vizagapatam included in the Scheduled Districts, *Collector of vizagapatam v. K. C. K. Patnaik* 52 Mad. 1: 55 M.L.J. 584 : 28 L.W. 614 : 115 I.C. 824 : 1928 A.I.R. 1181 (Mad.).

Old Acts.—Acts of 1860 and 1862 contained no provision for stamping of documents executed out of British India except Bill of Exchange. *Reference under Stamp Act*, 14 Mad. 255 F.B.

Month.—Month means a month according to British calendar. *The General Clauses Act*, (Act X of 1897) s. 3 (33).

Documents executed out of British India—Duty of Courts. Where a document is executed outside British India but is intended to operate in British India, held that the courts in British India need not see whether it complies with the stamp law of the country in which it was executed ; it is sufficient if it complies with the stamp law of British India, *In the goods of Mac Adam*. 23 Cal. 189. See also *Lakshammal v. Narasingha Raghava*, 38 Mad. 746 : 25 M.L.J. 572 : 1913 M.W.N. 833 : 14 M.L.T. 398 : 21 I.C. 445.

Limitation.—S. 17 (now s. 18) of the Act, of 1879 allows an instrument executed out of British India to be stamped within three months after it has then received in British India, *Rango Bhavani v. Tulji Ram Puranmal*, 1898 P.J. 371. See *Ali Mahammad v. Jagannath*

Persad, 26 A.L.J. 823 : 115 I.C. 453 : 1928 A.I.R. 666 (All.) where it was held that an acknowledgment executed in Gwalior and stamped with Gwalior Stamp is not admissible in evidence in British India, if stamped with the British India stamp outside three months.

19. The first holder in British India of any bill of exchange payable otherwise than on demand or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same :

• . Provided that,—

(a) if, at the time any such bill of exchange, or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled ;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

NOTES.

See s. 18 of Act I of 1879 and sec. 35 of the Stamp Act, 1891 (54 & 55 Vict. C. 39).

Amendment.—The words “payable otherwise than on demand” after the words “bill of exchange” when they first occur have been inserted and the word “cheque” wherever it occurs has been repealed under Finance Act V of 1927, Sec. 5 (4).

This section lays down that *bills of exchange payable otherwise than on demand and notes made or drawn out of British India* must be stamped and the stamp cancelled before the first holder in British India deals with the instrument.

Scope.—Section :18 (now s. 19) requires the first holder in British India to affix the proper stamp and cancel the same before he presents it for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India. *Mahomed Rowthen v. Mahomed Husin Rowthen*, 22 Mad. 337 : 9 M.L.J. 135. A promissory note executed outside British India can be sued on in British India and is admissible in evidence in British India without proper British India Stamp being affixed; if a stamp is necessary it is sufficient if it is affixed at the time of the decree. *Kunhi Coya Haji v. Panikka Vittel Assan Baba*, 36 M.L.J. 188 : 25 M.L.T. 181 : 52 I.C. 477. (*Mahomed Rowthan v. Mahomed Husin Rowthan*, 22 Mad. 337 : 9 M.L.J. 135 followed.) See also *Ramsing alias Ram Lal v. Parumal and another*, 9 S.L.R. 150 : 32 Ind. Cas. 582.

A pro-note made out of British India comes within s. 18 (now s. 19) of the Stamp Act and when a suit brought in British India on the strength of the pro-note, it is sufficient that the plaintiff is ready to stamp it before a decree is passed on it; the obligation to stamp arises only when the 1st holder presents it for acceptance or payment, or endorses, transfers or otherwise negotiates the note. *Simulu Ebrahim Rowthan v. Abdul Rahiman Mohamed*, 8 M.L.J. 182. S. 19 applies to the case of a promissory note executed out of British India and not s. 18. *Ali Mahammad v. Jagannath Prasad*, 27 A.L.J. 823 : 1928 A.I.R. 666 (All.) : 115 I.C. 453.

Document executed outside British India.—When a promissory note is executed outside British India and is valid according to the law of the place where it was executed it can be sued on in British India and may be admitted in evidence without affixing any Indian stamp. If any stamp is necessary it is sufficient if an Indian stamp is affixed on it at the time of decree. *Kunhi Koya Haji v. Panikka Vittel Assan Baba Haji*, 36 M.L.J. 188 : 52 I.C. 477. See also *Simmudu Ebrahim Rowthan v. Abdul Rahiman Mohammed*, 8 M.L.J. 182; *Mohamed Rowthan v. Mohamed Hussin Rowthan*, 22 Mad. 337 : 9 M.L.J. 135; *Ram Singh v. Parumal*, 9 S.L.R. 150 : 32 I.C. 582.

A promissory note executed in accordance with the law in force at the time of contract at the place where the contract was entered into was held to be admissible in evidence in British India on payment of stamp of British India, affixed in British India, by the vakil of the party at the time of filing the instrument in court, *Amina Begam v. H. H. The Nawab of Rampore*, 33 All. 571 : 8 A.L.J. 566 : 10 I.C. 247, but this case was distinguished in *Ali Mahammad v. Jagannath Prasad*, 26 A.L.J. 823 : 115 I.C. 453 : 1928 A.I.R. 666 (All.) on the ground that the case fell under s. 19 of the Stamp Act for which the statutory period of three months is not prescribed.

A pro-note not executed in British India is not compulsorily stampable in British India under the Stamp Act, but is chargeable with duty only when it is presented, paid or otherwise negotiated in British India. It is admissible in evidence if it is not stamped, if none of these events happen, *Ram Singh v. Perumal*, 9 S.L.R. 150 : 32 Ind. Cas. 582.

The pro-note must be valid according to the law of the State.— A promissory note was executed within H. H. the Nizam's Dominion but was stamped with the stamps of British India, and not with the stamp of Nizam's Dominion as required by law in force, in that Dominion. A suit was brought on that note in British India, held that a British Court can pass a decree on that promissory note as absence of stamps of Nizam's Dominions did not make the note void. *If the law in the foreign state renders the instrument void then it cannot be sued upon in a court in British India.* *Dhondiram v. Sadasuka*, 42 Bom. 522 : 20 Bom. L.R. 464 : 46 Ind. Cas. 174. See also *Rumpasad Shirlal v. Shrinivas Balmukund*, 27 Bom. L.R. 1122.

Section 19A.

19A. Bengal.—Where any instrument has become chargeable in any part of British India other than

Payment of duty on certain instruments liable to increased duty in Bengal under clause (bb) of section 3.

Bengal with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Bengal under clause (bb) of the first proviso to sec. 3—

(i) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India,

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty.

19A. Bombay.—Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or

Payment of duty on certain instruments liable to increased duty in Bombay Presidency.

to be done in the Presidency of Bombay is executed out of the said Presidency and subsequently received in the said Presidency—

(a) *the account of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in the Presidency of Bombay less the amount of duty, if any, already paid on such instrument in British India,*

(b) *and in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty, and*

(c) *the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instruments as if such were an instrument executed or first executed out of British India and first received in British India when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.*

19A. Madras.—Where any instrument has become chargeable in any part of British India other than the Presidency of Madras with duty under the stamp law in force in that part of British India and thereafter becomes chargeable with a higher rate of duty in the said Presidency under clause (bb) of the first proviso to section 3—

Payment of duty on certain instruments liable to increased duty under clause (bb) of section 3.

(i) *notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule 1-A less the amount of duty, if any, already paid on it in British India,*

(ii) *in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps*

necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same person as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty, and

(iii) the provisions contained in clause (b) or clause (c), as the case may be, of the proviso to sub-section (3) of section 32 shall, with the necessary modifications, apply to such instrument, but the provisions contained in clause (a) of the said proviso shall not apply thereto.

• **19A. Punjab**—Where any instrument has become chargeable in any part of British India other than the Punjab with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the Punjab under clause (bb) of the first proviso to section 3 as amended by the Indian Stamp (Punjab Amendment) Act, 1922—

Payment of duty on certain instruments liable to increased duty in the Punjab under clause (bb) of section 3.

(i) notwithstanding anything contained in the said proviso, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule 1-A less the amount of duty, if any, already paid on it in British India,

(ii) in addition to stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty.

19A. U. P. (Upto 31st March 1934).—Where any instrument has become chargeable in any part of

Payment of duty on certain instruments liable to increased duty in the United Provinces under clause (bb) of section 3.

British India other than the United Provinces with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the United Provinces under clause (bb) of the first proviso to section 3—

(i) notwithstanding anything contained in the first proviso to section 3 the amount of duty chargeable on such instrument shall be the amount chargeable on it under the Schedule IA less the amount of duty, if any, already paid on it in British India,

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty.

19A. Burma. (Up to 31st March 1935).—Where any instrument of the nature described in any article in Schedule I, and relating to any property situate or to any matter or thing done or to be done in Burma is executed outside of Burma and subsequently received in Burma—

Payment of duty on certain instruments executed outside Burma and subsequently received in Burma.

(a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in Burma less the amount of duty, if any, already paid on it in British India, and

(b) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) in the same manner and at the same

time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty.

D.—Of Valuations for Duty.

20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of British India, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

(2) The Governor General in Council may, from time to time, by notification in the Gazette of India, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

NOTES.

See Ss. 19, 20 of Act I of 1879 ; s. 19 of Act XVIII of 1869 and s. 6 (1) (a) of the English Stamp Act, 1891 (54 and 55 Vict. C. 39).

For notification prescribing rates, see No. C. 425 Stamps, 1925, 18th September, 1925, published in the *Gazette of India* dated 26th September, 1925 Part I Page 896 and in the Appendix to this book as amended upto date.

The section prescribes the method of valuation of an instrument when the valuation in such an instrument is expressed in a currency other than that of British India.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

NOTES.

See s. 21 of Act I of 1879 and sec. 6 (1) (b) of the English Stamp Act, 1891 (54 & 55 Vict. C. 39).

This section provides the method of valuation in calculating the *ad valorem* duty chargeable on an instrument in respect of any stock or any marketable security and lays down that the valuation of the instrument is to be the value at the date of the instrument. As to definition of marketable security see s. 2 (16A) *supra*.

Stocks.—The word 'stock' is not defined in this Act, but it has been defined in the Stamp Act in England (54 and 55 Vict. c. 39), s. 122, to include any share in any stocks or funds transferable at the Bank of England or at the Bank of Ireland, and India Promissory notes and any share in the stocks and funds in any Foreign Province, State or Government or in the capital, stock or funded debt of any country council, corporation, company, or society in the United Kingdom, or of any foreign colonial Corporation, Company or Society.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

NOTES.

See s. 22 of Act I of 1879 and s. 6 (c) of the English Stamp Act, 1891 (54 & 25 vict. C. 39).

Average price.—When the plaintiff sued to recover paddy or value of paddy agreed to be delivered, and the instrument was properly stamped on the value set out in the instrument, but there was a rise in price of paddy subsequently, held that "if there be a rise in the price of the paddy at the time of institution of suit, it would not make the instrument an instrument which is not properly stamped under the Act." *Bhairab Chandra Chowdhury v. Alek Jan*, 13 Cal. 268. But see *Samkhui Chandra Bepari v. Krishna Chandra Bepari*, 26 Cal. 179 where it was held that where the amount secured by the bond is ascertained and not to be ascertained at a future date, the bond is to be stamped with duty calculated on the amount payable and not on the amount advanced.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it

Instruments reserving interest.

would have been chargeable had no mention of interest been made therein.

NOTES.

See s. 23 of Act I of 1879 and s. 9 of Act XVIII of 1869.

Application.—S. 23 has no application to the case of a bond securing a loan, whereby double the amount borrowed was payable for principal and interest in certain instalments, *Sambhu Chandra v. Krishna Charan*, 26 Cal. 179; but this case has been dissented from in *Vithu v. Nathu*, 3 Bom. L.R. 133 (135).

Stipulation to pay interest in account stated.—Under Act XVIII of 1869, s. 9, a stamp of one anna is the proper stamp for a document containing an account stated and stipulating payment of interest. *Girdhar Narain v. Umar Aju*, 4 Bom. 326; *Samsuddin v. Dhakli*, 1887 P.J. 35.

Calculation of amount.—The stamp duty leviable is to be calculated on the sum actually due at the date of execution and any additional amount that may accrue due in future is not to be taken into account, *Narasayya v. Gururappa*, 1 Mad. 378. Arrear of interest is to be excluded in calculating the consideration *Nathwa Gheesla*, 5 of a transfer of a mortgage, *Sha Nagindas Joychand v. Halalkore Nathwa Gheesla*, 5 Bom. 470 (474, 475).

A bond whereby the principal money (Rs. 10) was payable with interest at Rs. 2-8, is to be stamped on for Rs. 10, the principal amount only, and the interest should be left out of consideration for the purpose of stamp duty, *Vithu v. Nathu*, 3 Bom. L.R. 133; so also an acknowledgment containing a promise to pay on demand with interest, *Mathurabai v. Dalpat*, 3 Bom. L.R. 839.

A promissory note is sufficiently stamped if the stamp is sufficient to cover the principal sum secured by the note, *L. Gomes v. J. Young and Others*, 12 W.R.A.C.J. 1 : 2 B.L.R.O.C. 165.

Where in a Hatchitta the defendant signed and there is an entry as to the payment of interest at Rs. 1-8 per cent per mensem and the instrument was stamped with a stamp of one anna, held that the document was not a mere acknowledgment of a debt but an agreement on which a stamp of eight annas under Schedule I Art. 5 is payable, *Mulchand Lala v. Kashibullav Biswas*, 35 Cal. 111 : 11 C.W.N. 1120. See also *Enatullah Biswas v. Gajaruddi Biswas*, 11 C.W.N. 1122; *Luxumi Bai v. Ganesh Rayhu Nath*, 25 Bom. 375; *Govind Singh v. Bijon Bahadur Singh*, 52 All. 169 : 27 A.L.J. 1279 : 121 I.C. 108 : 1929 A.I.R. 980 (All.).

Compound interest.—The Indian Stamp Act makes duty payable on a mortgage deed according to the "amount secured by such a deed," and a contract to pay compound interest in case of failure to pay the interest within the time stipulated does not convert the unpaid interest into principal and the duty payable is to be calculated on the principal sum only and not on the principal sum plus interest to be paid on due date. *Kuar Laxman Rao v. Keshao* (1908) 4 N.L.R. 90.

Interest is interest, however the amount is calculated. Compound interest is just as much interest as simple interest. S. 23 of the Indian Stamp Act does not cease to apply by reason merely of the fact that the interest is compound interest. *Barisal Rindan Samity v. Silal Chandra Mukhopadhyaya*, 58 Cal. 507 : 34 C.W.N. 911 : 129 I.C. 407 : 1930 A.I.R. 630 (Cal.).

As to stipulations to pay monthly interest and to pay interest on interest in case of default, see *Mulhu Chettiar v. Meenakshi Sundaram Aiyar*, 26 A.L.J. 488 : 30 Bom. L.R. 261 : 47 C.L.J. 183 : 32 C.W.N. 569 : 27 L.W. 395 : 54 M.L.J. 82 : 1928 M.W.N. 91 : 5 O.W.N. 166 : 107 I.C. 1 : 1928 A.I.R. 35 (P.C.).

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

23A. (1) Where an instrument (not being a promissory note or bill of exchange)—

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under [Article No. 5(c)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

[Madras.—

In subsection (1) of section 23-A after the word and figure "Schedule I" the words, figures and letters "or article No. 4(c) of Schedule I-A as the case may be" shall be inserted.

Punjab.—

In sub-section (1) of section 23-A the letter "A" shall be added after the figure "I".

NOTES.

This section is new and deals with equitable mortgage of marketable securities. Marketable security has been defined in s. 2 cl. (16A). See the cases noted there. See s. 23 of the Stamp Act 1891 (54 and 55 vict. c. 30).

Amendments.—S. 23A was added by s. 3 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904). The words “Article No. 5(c)” were substituted for the words “Article No. 5(b)” by s. 3 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

The elements are:—

(i) The instrument should *not* be a promissory note or a Bill of Exchange,

(ii) That it should be given on the occasion of a deposit of marketable security by way of security,

or (iii) That it may make redeemable or qualify a duly stamped transfer intended as security, of any marketable security.

The first clause contemplates equitable mortgage by deposit of the marketable security.

The second clause contemplates an instrument by which the rights created by the first instrument are extinguished.

24. Where any property is transferred to any person in consideration, wholly

How transfer in consideration of debt or subject to future payment, etc., to be charged.

or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether

being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

[Madras.—

In section 24 after the word and figure “Schedule I” the words, figures and letter “or article 16 of Schedule I-A as the case may be” shall be inserted.

Punjab.—

In the proviso to section 24 for the full stop shall be substituted a comma followed by the words, figure and letter "or Schedule 1-A, as the case may be."].

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage.

NOTES.

See s. 24 of Act I of 1879 and s. 34 (b) of Act XVIII of 1869.

See s. 57 of the English Act of 1891 (54 and 55 vict. chap. 39).

Application.—The provisions of this section cannot apply to cases of transfer subject to an existing rent charge, *Swayne v. Commissioners of Inland Revenue*, (1899) 1 Q.B.D. 335. See *In re Punam Chand Lallubhai Doshi*, 32 Bom. L.R. 1447 F.B: 128 I.C. 898: 1931 A.I.R. 1 (Bom).

Scope.—The scope and object of the enactment is clear, namely, that upon every purchase *ad valorem* duty shall be paid on the entire consideration which either directly or indirectly represents the value of the free and unincumbered corpus of the subject-matter of the sale, *Mortimer v. The Commissioners of Inland Revenue*, (1864) 2 H. and C. 838: 33 L. J. Ex. 263: 10 L.T. 655.

Construction.—S. 24 of Act I of 1879 makes its appearance in the Indian Statute Book for the first time in 1879, even though, as

we think, properly controlled by s. 23 in so far as interest was concerned. *Sha Nagindas Joychand v. Hufalkore Nathwa Gheesta*, 5 Bom. 470 (475, 476).

S. 24 has no connection with the liability to registration. Where a property is sold subject to a mortgage to a person other than the mortgagee, any unpaid purchase money is to be deemed part of the consideration of the sale for the purpose of stamp duty, *Jairam v. Bal Krishna Das*, 3 N.L.R. 72.

Where a mortgagor relinquishes his title to the mortgaged property and also agrees to pay Government Revenue till the name of the purchaser is recorded in the Collector's Books, *held* that the instrument was a conveyance; the amount is to be calculated under this section on the principal amount of mortgage plus the amount mentioned in the instrument, and the instrument must bear two stamps, one as a conveyance and the other as an agreement. *Sinapaya Bin Ramapaya Haridas v. Sirapa Bin Sidapa*, 15 Bom. 675. See also *Reference from the Board of Revenue*, 10 Cal. 92, at page 96, where the learned Judges of the Calcutta High Court were not inclined to adopt the above view in cases of a private transfer subject to a charge.

Where M and S conveyed their property by a registered deed of sale to R on receiving Rs. 1,000 and covenanted that Rs. 19,000 are to be kept in deposit with R to the credit of the vendors; afterwards R reconveyed the property to M and S by a sale deed purporting to be for Rs. 1,000 as consideration which he had previously paid in cash, *held* that under the provisions of s. 24 the sale deed should have been stamped with stamp duty calculated on Rs. 20,000 as the registration of the deed had transferred the full proprietary right from M and S to R; the only exception being in favour of a mortgagee purchasing the equity of redemption. *Emperor v. Rameshar Das*, 32 All. 171 (174); 7 A.L.J. 110; 51 I. C. 697.

Where a leasehold property was demised in favour of the original lessee for a term of 999 years at an annual rental of Rs. 39, but was assigned to the trustee of a charity for the sum of Rs. 1,02,000 whereby the rent reserved was payable by the trustee, *held* that stamp duty payable was to be calculated on the amount of purchase money which is mentioned in the instrument. *In re Stamp Act*, 24 Bom. 257; 2 Bom. L.R. 401.

Assignment of a debt.—Where a debt is assigned the value of the consideration of the *kavala* would be the amount of the debt. *In the matter of Nandu Bai v. Gau*, 27 Bom. 150; 4 Bom. L.R. 951. A letter of assignment by a debtor to the creditor to recover a debt from a person owing to the debtor requires a stamp. *Doraiswamy v. Doraiswamy Iyengar*, 87 I.C. 382; 1925 A.I.R. 753 (Mad.).

Allahabad High Court.—Where a property is sold by auction in execution of a decree subject to a mortgage, the certificate of sale is to be stamped according to the amount of purchase money and not on the amount of purchase money *plus* incumbrances, *Jwala Parsad v. Ram Narain*, 15 All. 107; 12 All. W.N. 243. See also *Emperor v. Rameshar Das*, 32 All. 171 *supra*.

Madras High Court.—Where the equity of redemption is sold in execution of a decree, the certificate of sale is to be stamped with duty calculated *ad valorem* on the amount of purchase money only. *Reference from the Board of Revenue*, s. 46, 7 Mad. 421.

A conveyance may be made in consideration of a present payment of money or delivery of stock or of a debt or of an undertaking in the future to pay money or deliver stock. Where there is such an undertaking the property is transferred subject to the payment. Where the property is under mortgage the property is subject to the charge, but the transfer is not necessarily subject to the charge; it becomes so if it be accompanied by an undertaking to discharge the mortgage. This undertaking is in whole or in part the consideration for the transfer. Where there is no such undertaking, the mortgage debt cannot be regarded as forming any part of the consideration for the transfer. The stamp duty payable on a certificate of sale is governed by an express provision and not by this section. *Reference under the Stamp Act*, 5 Mad. 18 F.B.

Bombay High Court.—Where a property sold subject to a mortgage then the duty payable is to be calculated on the amount of purchase money *plus* the principal amount of mortgage. *Sha Nagindas Joychand v. Hulakore Nathwa Gheesla*, 5 Bom. 470; *Meer Kaisarkhan Muradkhan v. Ebrahimkhan Musakhan*, 15 Bom. 532. See also *Shantlopha Chedambaraya v. Sabrao Ramchandra*, 18 Bom. 175. The whole of the mortgage debt and not merely a proportional part of it is to be included. *In re Vishnu Keshav Sathe*, 10 Bom. 58. See also *In Ramkrishna*, 9 Bom. 47: 1884 P.J. 260. Where property is sold at private sale for Rs. 10,000 but the property was subject to a mortgage of Rs. 13,858 along with other properties and was also subject to an attachment for Rs. 1,500, *held*, that the stamp duty is payable on Rs. 10,000 only as the clause "subject to a mortgage or other incumbrance" in the explanation governs the clause "sale of property" and not "property" only. [In this case the liability for mortgage charges and for the amount payable in respect of the attachment was accepted by the vendors]. It was further held that the conflict of decisions indicated by the decisions in 5 Bom. 470 and 10 Cal. 92: 13 C.L.R. 164, has been set at rest by s. 24 as enacted in the Act of 1899, and in a case of this kind where the vendors charged the full price of the property conveyed and *absolves the purchaser from the incumbrance*, it cannot be said that the Legislature has provided that the sale should be treated as being subject to a mortgage or that the consideration for the conveyance must include the amount of the incumbrance contrary to express agreement. *Waman Martand Bhalerao v. The Commissioner, Central Division*, 49 Bom. 73: 26 Bom. L.R. 942: 84 I.C. 421: 1924 A.I.R. 502 (Bom).

Calcutta High Court.—In *Reference from the Board of Revenue*, 10 Cal. 92: 13 C.L.R. 164 F.B. the Calcutta High Court said: "we believe this section has not yet received any judicial interpretation; but it would seem to mean nothing more than this, that the transferee, as between him and the transferor, shall take upon himself the burden of any charge which may exist upon the property. This would leave the law in the generality of cases as it was before

the Act was passed. The transferee would, as a matter of course, have taken the property subject to the charge. The only burden which he would not take upon himself would be the personal liability (if any) of the transferor. But even if it does, it would only affect *voluntary sales*; and would not apply to sale effected in execution under decrees of Court".

The clause 'subject to a mortgage or other incumbrance' in Expl. 1 to s. 24 governs 'sale of property' and not 'property'. Property may be subject to a charge and yet the sale may not be subject to it and where a bargain between the vendor and the purchaser is that the vendor will make a clean title free from all incumbrances, the explanation shall not apply. The language of the main clause shows that the question is whether the property is transferred subject to the payment of money. The explanation is entirely consistent with the language of the main clause. If the property is subject to a mortgage but the vendor, in return for the purchase price, is to give a clear title free from all incumbrances the explanation does not apply. The explanation is intended to make it clear that the provision of the main clause applies to any unpaid purchase money when the property is sold subject to the mortgage. [The cases reported in 5 Bom. 470 and 10 Cal. 92 F.B. not followed on the ground that there had been a change in law.] Therefore, if B. executes a mortgage over a certain property in favour of H. for Rs. 15,000 and R. purchases the right, title and interest of B. in execution of a money decree and then sells his right to J. for Rs. 1000 and declares in the deed that a suit on the mortgage on behalf of H. is pending, the explanation to s. 24 and the exact duty to be paid on the instrument is to be calculated on the basis that the unpaid mortgage money is to be added to the consideration money. *U. K. Janardhan Rao v. The Secretary of State for India in Council*, 58 Cal. 33 : 34 C.W.N. 470 : 127 I.C. 775 : 1931 A.I.R. 193 (Cal.) ; (49 Bom. 73 dissented from).

Proviso : Sale certificate.—See cases under Art. 18, *infra*.

Duty payable.—The stamp duty payable on a certificate of sale is governed not by s. 24 but by Art. 16 Schedule I of Act I of 1879 (now Article 18). *Reference under Stamp Act s. 49, 5 Mad. 18.*

Proviso : Mortgaged property transferred to mortgagee.—Where the mortgaged property is sold to the mortgagee along with other properties, the stamp already paid is to be deducted from the duty payable on the deed of sale. *Reference under the Stamp Act, II of 1899, 4 Bom. L.R. 430.* In order to entitle the mortgagor to a deduction of the duty payable, the entire property mortgaged should be transferred and not merely a portion of the mortgaged property. *In re Nirabai, In re Luzman and Ganpat*, 29 Bom. 203 : 6 Bom. L.R. 844.

Assignee of the mortgagee.—The exception provided in the proviso enures to the benefit of the assignee of the mortgagee. *Reference under the Stamp Act, 5 Bom. L.R. 523.*

Deduction in stamp on new instrument.—The vendors had mortgaged to the vendees (mortgagees) certain properties by an instrument which was duly stamped. The vendors (mortgagors) then

conveyed by an instrument duly stamped a portion of the mortgaged property for consideration. They, then, transferred to the vendees (mortgagees) the remaining portion of the mortgaged properties for consideration and the question arose as to the amount of the stamp payable as the whole mortgaged property was being transferred to the mortgagees and the mortgagors (vendors) claimed a deduction on the amount of stamp payable, *held* that the proviso should be construed strictly and confined only to those cases in which the identical property mortgaged is transferred to the mortgagee. The words "is transferred" in the proviso can only mean transferred by the instrument in question and so a previous instrument transferring the other part to the mortgagee which was duly stamped cannot be taken into consideration in construing the proviso. The words "wholly or in part" refers to the debt, the consideration of the transfer, and not to the property transferred. Therefore no deduction on the amount of stamp payable, can be allowed. *In re Frank Portlock*, 50 Bom. 640 : 28 Bom. L.R. 1091 : 98 I.C. 282 : 1926 A.I.R. 542 (Bom.). See also *In re Nirabai*, *In re Luxman and Ganpat*, 29 Bom. 203 : 6 Bom. L.R. 844.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due ; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the

maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

NOTES.

See s. 25 of Act I of 1879 and s. 12 of Act XVIII of 1869 and Ss. 56, 87(2) of the Stamp Act (54 and 55 vict. cap. 39.).

Application.—S. 25 would not apply to transfer of leasehold interest reserving an annual rent, *In re Stamp Act*, s. 57, 24 Bom. 257 : 2 Bom. L.R. 401.

Scope.—An entrance certificate granted under the rules of the uncovenanted Civil Service Family Pension Fund does not come within this section but falls under s. 3 (15) of the Stamp Act, 1879 [s. 2 cl. (19) of the Act of 1899], *Reference under Stamp Act 1879*, s. 46, 19 Cal. 499, as there was no provision in the Act which can relate to the valuation of annuities secured by life policies.

An award whereby a certain sum was made payable to a certain person, but without the benefit to be secured to the heirs or representatives of the person to whom it was payable, *held* that the instrument is to be stamped as an instrument securing an annuity under s. 25 (c) of the Act of 1879. *Reference under Act I of 1879*, s. 40, (1896) 16 All. W.N. 197.

When the *ad valorem* duty on the entire amount has been paid, further duty is not payable if the covenant be that the balance of the purchase money is payable by instalments and interest is payable in default, *Limmer Asphalt Paving Company v. Commissioners of Inland Revenue*, 7 Ex. 211 : 41 L.J. Ex. 106.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have

estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year ; and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

NOTES.

See s. 26 of Act I of 1879 and s. 11 of Act XVIII of 1869.

Amendment.—The first proviso was substituted for the old first proviso by s. 4 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Application.—This section will not apply to cases in which the value of the subject matter can be ascertained. *Mantappa v. Baswantrao*, 15 W.R.P.C. 32. See also *Ishan Chandra v. Sujan Bibi*, 15 W.R. 331 : 7 B.L.R. A.C. 14.

S. 26 applies only to those instruments which are chargeable with *ad valorem* duties. It can have no application to the case of a security bond executed by a cashier as security for the re-payment of any sum he might be found liable to the amount not exceeding Rs. 6,000. *MacDowell and Co. v. Raghava Chetty*, 27 Mad. 71.

When the contract was that the defendant should plant the land with casuarina trees and when the trees will be cut down and sold, the proceeds will be divided half and half, *held*, s. 26 has no application to the case, as the value of the subject matter can be ascertained at the date of the execution of the instrument. The section applies to the cases of mines which are expressly mentioned in the instrument. *Shebbayya v. Venkatasubbayya Chetty*, 31 M.L.J. 234 : 39 I.C. 448. See also *Sodamani Pottar v. Somasundara Mudaliar*, 4 M.L.J. 201.

Admissibility of instrument.—S. 26 of the Stamp Act does not refer to the admissibility of instrument. *Muthia Chetty v. Kothandaramaswamy Naidu*, 31 M.L.J. 347 : (1916) 2 M.W.N. 221 : 35 Ind. Cas. 864.

Scope.—S. 26 of the Stamp Act is to be read subject to s. 35 of the same Act. *Nilkanth v. Kesherao*, 1924 A.I.R. 408 (Nag.). See also *Kumar Brij Mohan Singh v. Lachmi Narayan Agarwala*, 5 P.L.J. 660 : 1 P.L.T. 719 : 1920 Pat. C.W.N. 289 : 56 I.C. 184 affirmed by P.C. in 51 I.A. 332 : 4 Pat. 34 : 5 P.L.T. 570.

"Claimable."—The word 'claimable' in s. 26 (now s. 26) proviso of Act I of 1879 means "claimable in a court of justice" and does not mean that sums paid privately to the mortgagee without any dispute or necessity for the enforcement of the bond are to be taken into account when the plaintiff brings a suit on the bond for the enforcement of the mortgage security. *Harendra Lal Roy Chaudhury v. Tarini Charan Chackerbutty*, 31 Cal. 807 : 8 C.W.N. 637.

The amount or value of the subject matter.—The amount or value of the subject matter of a mortgage is the amount expressed to be secured by the instrument, but when the charge is created in respect of a varying amount the minimum must be taken to be the amount that was intended to be secured. *A. L. M. A. L. Chetty Firm v. Maung Aung Ba*, 9 L.B.R. 217 : 12 Bur. L.T. 1 : 50 I.C. 303.

Where an instrument (a lease) stipulates for the payment of a sum of money equal to the value of a certain quantity of paddy, the value of which is to be determined by the collector, *held* that s. 26 applies as the value is not known until the Collector determined the value, *The Collector of Tanjore v. Ramsamier*, 3, Mad. 342 F.B. See *In the matter of Gujraj Singh*, 9 All. 585.

Under s. 26 of the Stamp Act nothing is claimable under the instrument in question beyond the amount or value for which the stamp is sufficient, but in the case of a mining lease the matter comes under the proviso to this section. S. 26 must be read subject to s. 35. Consequently a lessee is entitled upon payment of the penalty to recover from the lessor the royalty provided in the lease. *Kumar Brij Mohan Singh v. Lachmi Narain Agarwala*, 5 Pat. L.J. 660 : 1 Pat. L.T. 719 : 1920 Pat. C.W.N. 289 : 56 I.C. 184 ; affirmed by P.C. in 51 I.A. 332 : 4 Pat. 34 : 5 P.L.T. 570 : 82 I.C. 789 : 1924 A.L.R. 221 (P.C.) : 40 C.L.J. 445 : 26 Bom. L.R. 1140 : 20 L.W. 811 : 29 C.W.N. 296.

An objection that the plaintiff is not entitled under the provisions of s. 26 of the Indian Stamp Act, to recover anything in excess of the amount for which the stamp was paid, is not an objection, even though tenable, on which a decree should be set aside. If there is no proper stamp on the instrument it may be put in afterwards on payment of penalty and the instrument then becomes effective under s. 35 (a). *Baraboni Coal Concern Ltd. v. Paricharak and others*, 126 I.C. 712 : 1930 A.I.R. 526 (Cal.).

Valuation which cannot be ascertained at the date of execution of the instrument.—Where a lease provided for the payment of 847 Salagois of paddy valued at Rs. 2400, per year as rent, the value of the instrument would be that sum under Art. 39 of Sch. I of the Stamp Act, and s. 26 would not be applicable as that section applies to instruments which cannot be valued. *Sodamani Patter v. Soma Sundara Mudaliar*, 4 M.L.J. 201.

Where a grower of sugar-cane borrowed Rs. 25 half of which was earnest money, to secure supply by him of 21 maunds of rab (unrefined sugar) for which he is to receive a profit of 9 annas per maund over the price to be fixed at a meeting of the growers and the whole crop was hypothecated for due fulfilment of the contract, held that as the price to be fixed by the growers cannot be ascertained at the date of the execution, the bond fell within the provisions of s. 26 of the Stamp Act, and the future valuation cannot have the effect of adding to the stamp duty. *In the matter of Gajraj Singh*, 9 All. 585 (588).

The law under the old Act of 1860 was that the plaintiff was unable to recover more than the amount for which stamp duty was paid. *Syed Keramul Ali, Mutwalli v. Moonshee Abdul Wahab*, 17 W.R. 131. But the later Stamp Acts introduced a change and the proviso to s. 35 of this Act provides for the recovery of the entire claim on payment of penalty and deficit duty. *Kumar Brojo Mohan Singh v. Lachmi Narayan Agarwala*, 5. P.L.J. 660 : 1 Pat. L.T. 719 : 1920 Pat. C.W.N. 289 : 56 Ind. Cas. 184, affirmed by the Privy Council on appeal in *Lachmi Narayan v. Rameshwar*, 5 P.L.T. 570 : 51 I.A. 332 : 4 Pat. 34 : 29 C.W.N. 296 : 20 L.W. 311 : 40 C.L.J. 443 : 5 P.L.T. 570 : 26 Bom. L.R. 1140 : 82 I.C. 789 : 1924 A.I.R. 221 (P.C.). See also *Mulji Bechar v. Jetha Jeshankar and others*, 10 Bom. 239 ; *The Collector of Tanjore v. Ramasamier*, 3 Mad. 342.

Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiff cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. *T. Kistnasamy Pillay v. The Municipal Commissioners for Town of Madras*, 4 Mad. H.C.R. 120 (130, 131). But see section 35 of the present Stamp Act.

Proviso.—Under the proviso to s. 26 of the Stamp Act, the mining lease may be stamped with a duty calculated on an approximate value of the royalty to be received, and if any excess is claimed, then proper penalty under s. 35 of the Stamp Act may be paid and the claim fully recovered. *Kumar Braja Mohan Singh v. Lachmi Narain Agarwala*, 5 Pat. L.J. 660 : 1 Pat. L.W. 360 : 1920 Pat. C.W.N. 289 : 56 Ind. Cas. 184 ; affirmed by P.C. in 51 I.A. 332 : 4 Pat. 34 : 5 P.L.T. 570.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the

Facts affecting duty to be set forth in instrument.

duty with which it is chargeable, shall be fully and truly set forth therein.

NOTES.

• See 27 of Act I of 1879 and s. 34 (a) of Act XVIII of 1869 and S. 5 of the Stamp Act, 1891 (54 and 55 vict. c. 39).

Scope.—S. 27 requires that the consideration and other facts affecting the chargeability of any instrument to be fully and truly set forth therein. *Kumar Broja Mohan Singh v. Luchmi Narain Agarwalla*, 5 Pat. L.J. 660: 1 Pat. L.W. 360: 1920 Pat. C.W.N. 289 (296): 56 Ind. Cas. 181; affirmed by P.C. in 51 I.A. 332: 4 Pat. 34: 5 P.L.T. 570.

Valuation of instrument—stamp payable.—For the purpose of ascertaining the stamp payable on an instrument it should be looked at as it stands. *Raman Chetty v. Mahomed Ghouse*, 16 Cal. 432. See also *Sakharani Shankar v. Ramchandra Babu Mukire*, 27 Bom. 279: 5 Bom. L.R. 28. The stamp must be paid upon what is stated in the instrument, and cannot depend upon collateral evidence. *Chunder Kant Mookjee v. Kartic Chunder Chawle*, 14 W.R.A.O.J. 38: 5 B.L.R. 103.

The value of an instrument creating a settlement of properties is the value set forth in the instrument and not the market value of the property. *Reference under Stamp Act*, s. 46, 8 Mad. 453.

Valuation cannot be increased.—A deed of gift was executed which contained no statement of the value of the property thereby conveyed. The officer before whom it was produced impounded it and referred to the Deputy Commissioner of Bahraich, as Collector of the District, for necessary action. The matter eventually came to the High Court on reference under s. 57 (1) of the Indian Stamp Act, 1899. The Allahabad High Court answered the question thus:—“In the present instance there is no value set forth in the instrument. No doubt this is a contravention of s. 27 of the Indian Stamp Act, and if it be found that the omission to state the value of the property conveyed was done with intent to defraud the government, a prosecution will lie against the person who executed the instrument, under s. 64 of the Indian Stamp Act. . . . For the purpose of the stamp law the valuation in the instrument would have to be accepted. If there be an intentional under-valuation, then a prosecution would protect the Government against the attempted fraud. There is no provision in the law authorising the Collector to do what he has done in the present instance namely to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value ascertained”, *In the matter of Muhammad Muzaffar Ali*, 44 All. 339 F.B.: 20 All. L.J. 161: 65 I.C. 811: (1922) A.I.R. 82 (Allahabad). See also *Empress v. Venkatarayadu*, 12 Mad. 231 (233).

Effect of omission to state value.—An omission to set forth fully and truly the value of the property as required by this section is an

offence under s. 64 (a) of the Stamp Act. *Emperor v. Rameshar Das*, 32 All. 171: 7 A.L.J. 110: 5 I.C. 697.

28. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in case of certain conveyances.

(2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchase.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance

of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchaser :

“ Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

[**Bombay.**—*Provided that notwithstanding anything contained in article 23 of Schedule I the duty on such last mentioned conveyance shall in no case be less than two rupees*].

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

NOTES.

See s. 28 of Act I of 1879.

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary,
 Duties by whom payable. the expense of providing the proper stamp shall be borne,—

(a) In the case of any instrument described in any of the following articles of Schedule I, namely :—

[**Madras.**—*In clause (a) of s. 29 after the word and figure “Schedule I,” the words, figure and letter “or the corresponding articles of Schedule 1A as the case may be” shall be inserted.*

Punjab.—*In clause (a) of section 29 the letter “A”*

shall be inserted between figure "I" and the word "namely."]

- No. 2 (Administration Bond),
 - No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),
 - No. 13 (Bill of exchange),
 - No. 15 (Bond),
 - No. 16 (Bottomry Bond),
 - No. 26 (Customs Bond),
 - No. 27 (Debenture),
 - No. 32 (Further charge),
 - No. 34 (Indemnity-bond),
 - No. 40 (Mortgage-deed),
 - No. 49 (Promissory-note),
 - No. 55 (Release),
 - No. 56 (Respondentia Bond),
 - No. 57 (Security-bond or Mortgage-deed),
 - No. 58 (Settlement),
 - No. 62 (a) (Transfer of shares in an incorporated company or other body corporate),
 - No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),
 - No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—
- by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance :

- (6b) in the case of a policy of fire-insurance—by the person issuing the policy :
- (c) in the case of a conveyance (including a re-conveyance of mortgaged property)—by the grantee : in the case of a lease or agreement to lease—by the lessee or intended lessee :
- (d) in the case of a counterpart of a lease—by the lessor :
- (e) in the case of an instrument of exchange—by the parties in equal shares :
- (f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates : and,
- (g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

NOTES.

See s. 29 of Act I of 1379 and s. 6 of Act XVIII of 1869.

Amendments.—The words “No. 6—agreement relating to Deposit of Title Deeds, Pawn or Pledge,” were substituted for the words and figures “No. 6—Agreement to mortgage” by s. 5 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

The clauses (b) and (bb) were substituted for cl. (b) by s. 4 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

Local Amendments.—This section has been amended by Bengal Act III of 1922; Punjab Act VIII of 1922; Madras Act VI of 1922.

Saving of contracts.—Where the agreement contemplated that the defendant should bear costs incidental to the preparation of the deed, held that the plaintiffs are entitled to claim the stamp duty paid by them. *Dobson and Barlow v. The Bengal Spinning and Weaving Co.*, 21 Bom. 126.

(a) Promissory note.—A promissory note or any instrument of a like nature is to be stamped by the person making it. *Queen v. Nadhar Chand Poddar*, 24 W.R. Cr. 1.

(c) A deed of compromise purporting to convey immovable property not made part of the decree is to be stamped as a conveyance and the penalty leviable in such a case is to be paid by the grantee. *Atma Ram v. Emperor*, 7 Lah. L.T. 43.

(f) It is the duty of the purchaser at a court sale to bear the expense of proper stamp having regard to s. 29 (b) and Art 18 of the Stamp Act. *Collector of Ahmedabad v. Rambhau*, 32 Bom. L.R. 1084; 128 I.C. 31; 1930 A.I.R. 393 (Bom.).

(g) **Instruments of partition.**—*Old law.*—s. 29 declares that the expense of providing proper stamp shall be borne by the parties thereto in proportion to their respective shares in the property comprised in the instrument of partition. By the expression "the parties thereto" must be understood not merely the party or parties applying for partition, but the whole co-sharers who must necessarily be parties in the partition proceedings and equally bear the proper stamp duty. For the effect of the partition proceedings is that the property thereby loses its identity as a previously undivided *mahal*, and there is nothing unreasonable in making any instrument of partition, it matters not how limited the division may be, chargeable with stamp duty pertaining to the value of the whole." *Per Spankie J.*—"By s. 29 of the Act, in the absence of an agreement to the contrary, in the case of an instrument of partition, the expense of providing the proper stamp is to be borne by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by the Revenue Authority in such proportion as such Authority directs. . . . The last part of cl. c (now g) of s. 29 of the Act gives the revenue officer full authority in the matter and the 'final order' is the instrument of partition, *Reference by Board of Revenue, N.W.P., under Act I of 1879*, 2 All. 664 (666, 669) F.B.

The stamp on an instrument of partition is to be borne by each member according to his share under s. 29 (e) of the Stamp Act [s. 29 (g) of the Act of 1899]. *Reference under Stamp Act*, s. 46, 15 Mad. 164 F.B.; but now see Art. 45 of Schedule I of the present Act, and the cases thereunder.

It is the duty of the arbitrator to direct the parties to provide him with necessary stamps and he is not to deliver or publish his award on a plain paper. *Ram Kumar v. Khusal Chand Ganesh Das*, 107 I.C. 668; 1928 A.I.R. 166 (Nag.).

Section 29-A.

29A. Bengal.—*In applying sections 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bengal Stamp (Amendment) Act 1922, the references in those sections to the several articles in*

Application of sections 23-A, 24 and 29 to instruments chargeable with duty under Schedule I-A.

Schedule I shall be deemed to be references to the corresponding articles in Schedule IA.

29A. U. P.—*In applying section 23-A, 24 or 29 to any instrument chargeable with a higher rate of duty under the United Provinces Stamp (Amendment) Act, 1932, the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding articles in Schedule 1A.*

Application of sections 23-A, 24 or 29 to instruments chargeable with duty under Schedule 1A.

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Obligation to give receipt in certain cases.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

NOTES.

See s. 58 of Act I of 1879 and s. 27 (a) of Act XVIII of 1869.

Amendment.—The second paragraph was added by s. 5 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

This section requires that a person—

- (1) receiving in cash money exceeding Rs. 20, or
- (2) receiving a bill of exchange, cheque or promissory note for an amount exceeding Rs. 20 in value, or
- (3) receiving movable property exceeding Rs. 20 in value in satisfaction or part satisfaction of a debt,

shall grant on demand a duly stamped receipt.

Refusal to grant such a receipt would make him liable to criminal prosecution under s. 65 of this Act. An unstamped receipt

may be validated by payment of penalty under s. 35, Proviso (b).

Construction.—The term “person” includes members of a trading partnership. *Queen Empress v. Khetter Kristo Mitter*, 27 Cal. 324 : 4 C.W.N. 447.

Shall on demand.—A receipt duly stamped is to be granted on demand, otherwise the party who should have granted it, is liable to criminal prosecution. *Queen Empress v. Khetter Kristo Mitter*, 27 Cal. 324 : 4 C.W.N. 440.

Scope.—S. 58 (now s. 30) of Act I of 1879 only provides that a party making a payment may demand a receipt. It does not preclude evidence of payment other than receipt even when a receipt has been granted but not produced in evidence. *Sheshayya v. Subbanna*, 8 M.L.J. 269. S. 30 does not require a person receiving money to specify the particular purpose for which money is paid. He is only required to give a receipt for the sum paid. *Emperor v. Balmakund*, 34 All. 192 : 9 All. L.J. 97 : 13 Ind. Cas. 778.

Postal money order.—The payee in a postal money order who has signed the postal receipt, cannot be required to grant another receipt for the amount received by him through the post office. The postal receipt is sufficient as it is exempted from Stamp duty under notification No. 735 S. R., dated the 17th February, 1899, by Governor-General in Council in exercise of the powers conferred by s. 9 of the Stamp Act. *Emperor v. Balmukund*, 34 All. 192 : 9 A.L.J. 97 : 13 I.C. 778.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not and whether previously

Adjudication as to proper stamp.

stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

NOTES.

See s. 30 of Act I of 1879 and s. 39 of Act XVIII of 1869. See s. 12 clauses (1) and (2) of the Stamp Act, 1891 (51 and 55 vict. c. 39).

This Section empowers the Collector to determine the duty on an instrument—

(a) whether stamped or not and

(b) whether executed or not.

The power is to be exercised subject to the provisos to section 32.

Nature of determination by Collector.—A determination by Collector of any matter which he is competent to decide, under s. 31 of the Stamp Act as the duty with which an instrument is chargeable is not a "case" which can be referred by revenue authorities to the court under s. 57 of the Stamp Act. Such a determination is

final on the question of Stamp duty payable. *Reference under Stamp Act, s. 57, 25 Mad. 752 F.B.*

Person bringing it.—Under the English law any person may desire the opinion of the Commirsoner. There is no reason for interpreting these words in a different way. The person bringing the instrument may be an agent not necessarily authorized.

32. (1) When an instrument brought to the Certificate by Collec- Collector under section 31 is, in tor. his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be ; and if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse—

(a) any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be ;

(b) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India ; or

(c) any instrument chargeable with the duty of [*Two annas in Bombay,*] one anna or half an anna or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

[**Bengal.**—*In section 32 of the said Act,—*

(1) in clause (a) of the proviso, after the words “any instrument” the words “other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3” shall be inserted ;

(2) The word “or” at the end of clause (b) of the proviso shall be omitted ;

(3) after clause (c) of the proviso the following shall be inserted, namely :—

“or

(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months from the date on which it is first received in Bengal.”

Madras.—*In clause (c) of the proviso to sub-section (3) of s. 32 after the words “half an anna” the following shall be inserted, namely :—*

“or a mortgage of crop [article 34 (a) of Schedule 1-A] chargeable under clause (aa) or (bb) of section 3 with a duty of two annas.”

Punjab.—*In section 32—*

in clause (a) of the proviso, after the words “any instrument” the words “other than an instrument chargeable with a duty under clause (bb) of the first proviso to

section 3 as amended by the Indian Stamp (Punjab Amendment) Act, 1922", shall be inserted ;

"(2) the word "or" at the end of clause (b) of the proviso shall be omitted ;

(3) after clause (c) of the proviso the word "or" shall be added followed by a new clause (d) as follows :—

(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 as amended by the Indian Stamp (Punjab Amendment) Act, 1922, and brought to him after the expiration of three months from the date on which it is first received in the Punjab.

U.P.—*In section 32 of the said Act—*

in clause (a) of the proviso, after the words "any instrument" the words "other than an instrument chargeable with a duty under clause (bb) of the first proviso to Section 3" shall be inserted ;

(2) the word "or" at the end of clause (b) of the proviso shall be omitted.

(3) after clause (c) of the proviso the following shall be inserted, namely,

"or

(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months from the date on which it is first received in the United Provinces."

NOTES.

See s. 31 of Act I of 1879 and s. 39 of Act XVIII of 1869. See clauses 3, 4 and 5 of s. 12 of the Stamp Act, 1891 (54 and 55 vict. c. 39).

Amendments.—The words "or half an anna" were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

The instrument *i. e.* the *original instrument* should be brought before the Collector for determination of duty according to the procedure laid down in s. 31. The Collector then endorses on the instrument, that the duty as determined by him has been paid on the instrument is properly stamped. But there are exceptions in the proviso. These are (i) that the instrument should be brought to him

within one month of the date when the instrument was executed or first executed in British India, (ii) that an instrument executed or first executed out of British India should be brought within 3 months after it has been received in British India, (iii) that the instrument should not be a promissory note or a bill of exchange or an instrument chargeable with duty of one anna or half an anna. This may include duplicates where the duty on the original is one anna.

Decision by Collector.—The decision by Collector cannot be questioned by Civil Courts. *Musst. Jai Debi v. Gokulchand*, 131 P.L.R. 1906 F.B; *Tukaram v. Sonaji*, 7 N.L.R. 26 : 10 I.C. 702.

The effect of a decision by the Collector.—A determination by Collector of any matter, under s. 31 of the Stamp Act of any matter which he is competent to decide as to the amount of duty chargeable on any instrument is final when it has been endorsed on the instrument. The effect of s. 32 of this Act is to make a determination by the Collector, which has been duly endorsed upon the instrument, final in respect of the instrument. *Reference under Stamp Act, s. 57*, 25 Mad. 751. The effect of an adjudication by the Collector under s. 31 is that it is final and is not subject to the control of the Chief Revenue Authority under s. 56 and therefore the Chief Revenue Authority cannot make a reference under s. 57 of this Act, *In re Cooke and Kelvey*, 59 Cal. 1171 : 1932 A.I.R. 736 (Cal.). The decision by the Collector is final and he is precluded from cancelling or modifying his endorsement once made on the instrument (*Madras Board's Proceedings, Mis. No. 218 dated 16th July 1928*).

Review by Civil Court of decision by a Collector.—A civil court cannot review the certificate granted by the Collector under s. 32 of the Indian Stamp Act and its validity cannot be challenged in any way except under s. 57 of the said Act on a reference by the Chief Controlling Revenue Authority, *Firm of Parsram Hirji v. Firm Parsram Hassanani*, 94 I.C. 747 : 1926 A.I.R. 211 (s.); see also *Tukaram v. Sonaji*, 7 N.L.R. 26 : 10 I.C. 702.

Effect of Collector's endorsement.—S. 32 makes the endorsement by the Collector final as to the admissibility of an instrument. A civil court has no power to question the certificate under s. 32 and s. 37 except by a reference under s. 57 by the Chief Revenue Authority. When the duty payable on an instrument has been fully paid in the shape of Government stamp, whether judicial, postal, forest or telegraph, the instrument should not be deemed as unstamped simply because the stamp used is not of the description which under the Stamp Act and the Rules, should be used on the instrument in question. Such an instrument bears a stamp of sufficient amount but of improper description within the meaning of R. 16 of the Rules under the Act : and can, as such be validated by the Collector. In view of the retrospective effect given to the Collector's validation by s. 37, the rejection of a document can be questioned in appeal. The plaintiff should be given an opportunity to validate it before his suit is dismissed, on the ground that the document is inadmissible in evidence. If no opportunity is given, that is a good ground of appeal. *Tucaram v. Sonaji*, 7 N.L.R. 26 : 10 I.C. 702.

Certificate by Collector an impressed stamp.—A certificate by the Collector is to be regarded as an impressed stamp. *Reference under Stamp Act, s. 46, 11 Mad. 37. See also s. 49 explanation.*

Irregularity in endorsement.—A promissory note was written upon an unstamped paper but subsequently after the execution it was brought to the Collector for assessment of duty, which was then paid. The Collector thereupon endorsed on the instrument that proper stamp duty has been paid, *held* that the irregularity in endorsement did not render it inadmissible in evidence. The remedy is by an application to the superior revenue authorities under s. 40 (now s. 61 of Act II of 1899). *Giridhari Das v. Jagannath*, 3 All. 115 (117). See also *Devachand v. Hirachand Kamaraj*, 13 Bom. 449 (457).

Refund.—A refund of stamp duty levied and certified under s. 31 (now s. 32) of Act I of 1879, may be made under the provisions of Act I of 1879 (now s. 49 of Act II of 1899). *Reference by the Board of Revenue, s. 46, 11 Mad. 37 F.B.*

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he

does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

(a) the Governor General in Council may determine what offices shall be deemed to be public offices ; and

(b) the Local Government may determine who shall be deemed to be persons in charge of public offices.

NOTES.

See s. 33 of Act I of 1879 and ss. 22 and 23 of Act XVIII of 1869.

The document must be an instrument.—A certificate of sale is not an instrument within the definition as given in the Indian Stamp Act before the Judge signs it and after he signs it the Judge becomes *functus officio*, therefore, he cannot allow any deficiency in the stamp to be made up nor can he impound such a document under s. 33 (1) of the Stamp Act, *Collector of Ahmedabad v. Rumbhan*, 32 Bom. L.R 1084 : 123 L.C. 31 : 1930 A.L.R. 393 (Bom.).

Who can impound.—Where s. 50 (now s. 61) does not apply, the court can proceed under s. 33 in case of instruments admitted in evidence by the first court and impound the same, *Baiju v. Jawahir*, 195 P.R. 1833 F.B. Under s. 33 of the Stamp Act it is optional with the Magistrate to examine and impound the instrument if it appeared to be insufficiently stamped, *Jagannath Rahatgir v. Pandit Deokinandan and another*, 29 Ind. Cas. 671 [The proviso (a) makes it optional with the Criminal Court to impound or not to impound.] “Every person having by law or consent of parties etc.”—this is to include arbitrators or persons who are to arrive at a decision relating to the dispute between the parties. This is to include civil and criminal judiciary. The limitation to the exercise of the power is that the instrument must come before the person in the exercise of his functions.

Every person in charge of a public office—A Registration officer can impound. See sub-sec. (3).

Scope.—Under s. 33 of the Stamp Act, an instrument must be impounded before it can be admitted in evidence upon payment of penalty. The final decision whether it is really insufficiently stamped rests with the Collector and not with the appellate court. *Pearcy Lall v. Sukhan Ram*, 93 I.C. 960 : 1926 A.I.R. 476 (All.) ; *N.M.R. Nagappa Chetty v. V. A. A. R. Firm*, 48 M.L.J. 306 : 91 I.C. 772 : 1925 A.I.R. 1215 (Mad.).

In the performance of his functions.—Plaintiff sued on a *hatchitta* contained in a bound volume, which contained 6 *hatchittas* by other persons but which are not subject matter of any suit. The *hatchitta* in question was not properly stamped and an examination of the other *hatchittas* disclosed the fact that they are also insufficiently stamped. The Munsiff impounded all the *hatchittas* under s. 33 of the Indian Stamp Act ; *held* that the Munsiff had no jurisdiction to impound *hatchittas* other than the one which formed the basis of the suit, as it cannot be said that the other *hatchittas* came before the Munsiff in the performance of his function. Before action can be taken under sub-section 1 of s. 33, it must be established that the instrument in question was produced or came before the officer in the performance of his functions, *Sashi Mohan Saha v. Kumud Kumar Biswas*, 21 C.W.N. 246 : 27 C.L.J. 525 : 35 Ind. Cas. 415.

A court acts without jurisdiction in calling upon a party to produce his account books in court and to impound the same, when there is no case in court, *Musst. Jai Deri v. Gokul Chand*, 131 P.L.R. 1960 F.B. But where a Magistrate issues a warrant with a view to discovery of registers kept by the accused, containing documents not stamped in accordance with the provisions of the Stamp Act, and in course of the search, the register was seized and produced before the Magistrate, *held* that the instrument thus produced may be impounded as the word “comes” is sufficiently wide to include documents produced by search under a search warrant, *Emperor v. Balu Kuppayyan*, 25 Mad. 525. The Indian Registration Act does not give any power to the Sub-registrar or the Registrar to order production of a document after it has been registered and delivered to the party concerned with a view to examining the stamp duty thereon and making a reference to the Collector, if necessary, under s. 33 of the Indian Stamp Act. Therefore such a Sub-registrar cannot be said to be acting in the performance of his function when the Sub-registrar impounds such a document after the order as aforesaid. Such a reference is *ultra vires*, *Thakardas and others v. Emperor*, 1932 A.I.R. 495 (Lah.) : 138 I.C. 758 F.B.

The arbitrators, even though the parties do not take the objection, are bound by the Indian Stamp Act to take notice of any omission or insufficiency in the stamping of any document produced before them. They are also to require under proviso (a) to s. 35 of the Indian Stamp Act, before they receive in evidence or act under the submission to arbitration the payment of the necessary duties and penalties, as they are persons having, by consent of the parties, authority to

receive evidence. *Hurdwary v. Ahmed Musaji Saleji*, 13 C.W.N. 63 (68) : 1 Ind. Cas. 371, On appeal, *Baijnath v. Ahmed Musaji Saleji*, 40 Cal. 219 : 17 C.W.N. 395 : 18 Ind. Cas. 978.

Determination of insufficiency of stamp.—The duty chargeable on an insufficiently stamped instrument must be determined according to the provisions of the Act in force at the time the instrument was executed, but the penalty must be levied under Act I of 1879, i.e. the Act in force at the time the question as to insufficiency arose. *Reference under Stamp Act, s. 46*, 5 Mad. 394 F.B. See also *Narayanan Chetti v. Karuppatham*, 3 Mad. 251, (253) ; *In re Deri Ditta Mal*, 7 P.R. 1885 Rev.

Revision by High Court.—An order impounding an instrument is an interlocutory order and the High Court will interfere only if irreparable damage would be caused by refusal by the High Court to interfere at that stage. *Ma Thim Ta v. K. K. R. M. Veera Kalai*, 131 I.C. 503 : 1931 A.I.R. 192 (Ran.).

• **34.** Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

Special provision as to unstamped receipts.

NOTES.

This section is new. This section only refers to receipts produced in the course of audit of any public account. The officer has a discretion either to impound or require the receipt to be stamped.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Instruments not duly stamped inadmissible in evidence, etc.

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty of [two annas in Bombay] one anna or half an anna only, [or a mortgage of crop (article 34 (a) of Schedule 1-A) chargeable under clauses (aa) or (bb) of section 3 with a duty of two annas]—

in Madras] or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

NOTES.

Compare s. 34 of Act I of 1879, Ss. 18, 19, 20, 28 of Act XVIII of 1869 and ss. 14 and 15 of the Stamp Act, 1891 (54 and 55 Vict. c.39).

Amendments.—The words 'or half an anna' were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906). The proviso (a) has been amended by Act XIII of 1924 whereby the proviso is made applicable to promissory notes for values higher than Rs. 250. No penalty can be levied on instruments mentioned in Arts. 19, 36, 37 or 52 in Sch. 1 to the Stamp Act under that Act.

Section 35 enacts that no instrument chargeable with duty shall be

- (i) admitted in evidence for any purpose whatever by any person having by law (such as Judges, Commissioners to record evidence etc.) or consent of parties (such as arbitrators) authority to record evidence; or
- (ii) shall be acted upon or
- (iii) registered or
- (iv) authenticated by any such person as aforesaid or by any public officer.

The words 'admitted for any purpose' cannot refer to admission of documents for a collateral purpose or in a criminal proceeding [proviso (d)] and an insufficiently stamped document can be admitted for a collateral purpose or in a criminal proceeding. An insufficiently stamped instrument is not an invalid document. (53 Cal. 515) and it can be admitted in evidence on payment of penalty. The various provisos regulate the payment of penalties in all the cases. The penalty can be levied on all instruments except a promissory note or a bill of exchange or an instrument chargeable with the duty of one anna which documents are admitted in evidence on payment of penalty. But a receipt although chargeable with the duty of one anna can be admitted on payment of penalty of R 1 [Proviso (b)], Act XIII of 1924 specifies the instrument which cannot be admitted in evidence even if penalty be paid in respect of instrument bearing a duty higher than one anna. An agreement contained in a series of letters had stamp on one of them [proviso (c)]. See also the various Provincial Amendment Acts, Sec. 6-A.

This section by proviso (e) excludes the question of admission of documents executed by or on behalf of Govt. [See s. 3 proviso. (i)] or where the instrument has been certified by the Collector under s. 32 or under provision of this Act as questions as to insufficiency do not arise in these cases.

The stamp used must be of the description specified in this Act, or in the rules under this Act. The stamp used must be cancelled as provided for in this Act. This section also provides that these instruments cannot be 'acted on' which means that nothing can be recovered under the instrument unless proper stamp is paid.

Application.—The prohibition contained in the first part of the section (35) that no instrument chargeable with duty shall be admitted in evidence for any purpose or, action be taken upon it unless it is

stamped, does not apply to proceedings in Criminal Courts. *Jagan-nath Rahatgir v. Deokinandan*, 29 I.C. 671 (Calcutta). S. 34 (now s. 35) of Act I of 1879 applies only to instruments which are chargeable with duty. *Mohamed Rowthan v. Mahamed Husain Rowthan*, 22 Mad. 337: 9 M.L.J. 135.

The provisions of s. 34 (now s. 35) of the Stamp Act I of 1879 have no application when the original instrument, which ought to have been properly stamped but was not, has not been produced. *Raja of Bobbili v. Inuganti China Sivaramsami Garu*, 26 I.A. 262: 23 Mad. 49: 4 C.W.N. 117 P.C.

S. 34 (now s. 35 and s. 36) applies to all instruments without reference to the time when it was executed and it overrides the special provisions of s. 10 of Bombay Regulation XVIII of 1827 which provides that any instrument not stamped but requiring a stamp, is an invalid instrument, *Gurupada Bin Irapa v. Naro Vithal Kulkarni*, 13 Bom. 493.

An instrument which is chargeable with stamp duty but bears no stamp is like an invalid instrument which may be received in evidence for a collateral purpose or in criminal cases. Secondary evidence of its contents is not receivable, *Thaji Beebi v. Tirumaliappa*, 30 Mad. 386: 17 M.L.J. 308.

S. 35 deals with instruments upon which duty is chargeable and has no application to the case of an instrument upon which no duty is chargeable, *Francis Herbert v. Nawab Saiyad Muhammad Akbar*, 7 Patna 99: 105 I.C. 502: 1928 A.I.R. 113 (Patna).

Proviso.—The proviso (a) to s. 35 is applicable to documents compulsorily registrable, *Biswanath Bhattacharjee v. Govinda Chandra Das and others*, 29 C.L.J. 305 (310): 23 C.W.N. 534: 57 Ind. Cas. 88. S. 35 provides, that all instruments chargeable with duty except a document chargeable with a duty of one anna or a bill of exchange or promissory note shall, subject to the payment of penalties, be admitted in evidence. *Jalan Chand v. Assaram*, 22 C.L.J. 22 (24): 33 I.C. 247. The words “subject to all just exceptions in the proviso to the section” do not permit a court to reject a document on the ground of its inability to determine the proper stamp duty thereon. *Bhimsena Rao v. Venugopala*, 48 Mad. 631: 48 M.L.J. 384: 1925 M.W.N. 190: 21 L.W. 672: 88 I.C. 443: 1925 A.I.R. 725 (Mad.).

Scope.—Section 35 of the Stamp Act prohibits the admission in evidence of any unstamped document and the proviso sets forth the conditions on which a defective document may be admitted but it does not cover the case of a copy of a document and further enjoins that no document can be admitted till after payment of the duty and penalty. *Rahim Baksh v. Mohammad Ayub and another*, 3 Lah. 282: 1922 A.I.R. 354 (Lahore): 69 I.C. 723. A Court cannot admit in evidence an instrument not duly stamped upon levy of a penalty under s. 34 (now ss. 35 and 36) unless the instrument is actually before it. *Kallu v. Halki*, 18 All. 295 (298).

The section contains a rule of procedure.—S. 34 (now s. 35) of

the Stamp Act I of 1879 contains a rule of procedure and regulates the manner in which unstamped or insufficiently stamped instruments are to be dealt with in suits instituted after the passing of Act I of 1879: whether such documents were executed before or after the passing of Act I of 1879. This interpretation is borne out by the definition given in the Act of expressions "Chargeable" and "duly stamped" and as they occur in s. 34 (s. 35). They show that s. 34 (now s. 35) contemplates that its provisions are to govern impositions of penalty on unstamped or insufficiently stamped documents, even though the document might have been executed before Act I of 1879 came into force. *Atma Ram v. Sardar Kuar*, (1884) All. W.N. 328; *Niratan Mitter v. Abdul Gafur Gazi and others*, 32 C.L.J. 75: 59 Ind. Cas 3.

Construction.—S. 35 does not prevent an instrument which is not at once rejected or which comes within the excepted ones, from being admitted in evidence on payment of penalty. *Nathu v. Hansraj*, 9 Bom. L.R. 123. Considering sections 35, 36 and 61 together, it is clear that the absolute provisions of s. 35 are not affected by section 36. Section 36 applies to instruments admitted in evidence under the proviso to s. 35 and to instruments which a court holds as not liable to stamp duty; if a court admits in evidence or acts upon an unstamped instrument which cannot under any circumstances be admitted in evidence then s. 36 does not prevent a superior court from dealing with the illegality. *Maung Ba Kyuan v. Ma Kye Kye*, 2 L.B.R. 103.

For any purpose.—An acknowledgment fulfilling the conditions of Article 1 of the Schedule cannot, if unstamped, be given in for any purpose. The words of s. 34 (now s. 35) are free from ambiguity and prevent an instrument which is chargeable with a duty of one anna, from being admitted in evidence "for any purpose" including the purpose of saving limitation. The unstamped document can be admitted in evidence for a collateral purpose. *Mulji Lala v. Lingu Makaji*, 21 Bom. 201; See also *Rustomji Ardeshir Irani v. Vinayak Gangadhar and others*, 35 Bom. 29 (33): 12 Bom. L.R. 723: I.C. 955; *Thaji Bibi v. Tiramalaiappa Pillai*, 30 Mad. 386: 17 M.L.J. 308; *Sitaram v. Thakurdas* 50 I.C. 781.

It would thus appear that the word 'for any purpose' mean 'for any purpose for which a stamp is necessary'; See *fengl v. Fengl* (1914) 112 L.T. 173: 59 L.J. 42, where it was held that a document cannot be received in evidence for a collateral purpose. The words "available for any purpose whatever" were introduced in the English Act, 1891 for the 1st time. The word 'instrument' in sec 35 does not qualify the meaning of the words 'for any purpose' *Bishunath Singh v. Ishri Dayal*, 50 W.N. 755: 112 I.C. 247: 1928 A.I.R. 408 (Oudh).

Duly stamped.—The word "duly stamped" in s. 35 of the Stamp Act, refers to the time when it is tendered in evidence, *Motilal v. Jagmohandas*, 6 Bom. L.R. 699. When a document is tendered in evidence the only question for the court is whether it bore a proper stamp when it was tendered. The court had no business to enquire when the stamp was affixed. *Kali Charan Das v. Nabo Kristo Pal*, 9 C.L.R. 27 but see s. 17 of the Stamp Act; See also s. 2 (11) of this

Act, *Supra*; See the case of *Jayman Bewa v. Easin Sardar*, 53 Cal. 575 : 30 C.W.N. 602 : 43 C.L.J. 493 : 95 I.C. 483 : 1926 A.I.R. 877 (Cal), where it was held that the effect of not stamping an instrument is not to affect its validity but is only to render it inadmissible in evidence.

Chargeable.—See definition s. 2 Cl. (6) *supra*. s. 35 deals with instruments upon which duty is chargeable and has no application to the case of an instrument upon which no duty is chargeable, *Francis Herbert v. Nawab Saiyad Mahammad Akbar*, 7 Patna 99 : 9 P.L.T. 221 : 105 I.C. 502 : 1928 A.I.R. 113 (Patna). See also *Thaji Bibi v. Tirumaliappa*. 30 Mad. 386 : 17 M.L. J. 308.

Instruments chargeable with duty of one anna etc.—Under s. 35 (a) instruments chargeable with a duty of one anna [or half an anna] only, or a bill of exchange or promissory note cannot be admitted in evidence on payment of duty and penalty for any purpose by any person having by law or consent of parties authority to receive evidence. But a receipt although chargeable with one anna may be received in evidence upon payment of penalty [proviso (b)].

The other articles providing for a duty of one anna are. 1. 19, 28, 41 (a), policies of insurance, and shipping orders (Art. 60).

By any person having by law or consent, etc.—The corresponding words in the English statute are court, arbitrator or referee.

Arbitrators.—The arbitrators are to require under proviso (a) to s. 35 of the Indian Stamp Act, before they receive in evidence or act under the submission, the payment of the necessary duties and penalties, *Hurdwary Mull v. Ahmed Musaji Saleji*, 13 C.W.N. 63 (68) : 1 I.C. 371. But where the arbitrators have admitted an instrument in evidence such admission cannot be called in question subsequently; s. 36 is a bar, *Kali Charan Banik v. Mani Mohan Banik*, 28 C.W.N. 871 : 82 I.C. 416 : 1924 A.I.R. 794 (Cal.).

Acted on.—"An instrument cannot be 'acted upon' that is to say, nothing can be recovered under it unless it has proper stamp." *Lachmi Narayan Agarwalla v. Rameshwar Prasad Singh*, 51 I.A. 332 : 4 Patna 34 : 5 P.L.T. 570 : 29 C.W.N. 296 : 40 C.L.J. 443 : 47 M.L.J. 300 : 26 Bom. L.R. 1140 : 1 O.W.N. 704 : 20 L.W. 811 : 1924 A.I.R. 22 (P.C.) : 82 I.C. 789 (2).

S. 35 of the Indian Stamp Act is, however, clear in its provisions and forbids any person having by law or consent of the parties authority to receive evidence from acting on it until it is duly stamped. *Hurdwary Mull v. Ahmed Musaji Saleji*, 13 C.W.N. 63 (68) : 1 Ind. Cas. 371.

When an instrument is admitted in evidence it is "acted upon" by court. When a suit is brought upon two hundis which are insufficiently stamped hence inadmissible in evidence but the lower appellate court passed a decree holding that the hundis need not be put in evidence, held, on further appeal, the lower appellate court in passing the decree has acted upon the hundis which under this section it should not have done. *Chenbasappa v. Lakshman Ramchandra*, 18

Bom. 369 : 1893 P.J. 224 ; *Mulji Lala v. Lingu Makaji*, 21 Bom. 201 F.B. To allow an unstamped promissory note to be proved by secondary evidence, would clearly be acting on it, Per Birdwood J. in *Damodar Jagannath v. Atmaram Babaji*, 12 Bom. 443 (446). An instrument which should have been stamped but is not stamped, is not admissible in evidence for any purpose whatever, as such admission in evidence would be acting upon the instrument, *Thaji Beethi and others v. A. V. Tirumalaiappa*, 30 Mad. 386 : 17 M.L.J. 308 ; *Muttukaruppa v. Rama Pillai*, 3 Mad. H.C.R. 158 (160). See also *Ramdas v. Inayat-ullah*, 45 All. 374 : 21 A.L.J. 263 : 71 I.C. 1027 : 1923 A.I.R. 297 (All.).

Where a pro-note was executed in payment of rent due to the landlord, but when the landlord sued on it the pro-note was found to be insufficiently stamped, held no decree can be passed on the pro-note as granting a decree on the pro-note would be acting upon it and under s. 35 of the Indian Stamp Act it could not be admitted and "acted upon" for any purpose whatever. *Gangu Ram v. Amir Chand*, 66 P.R. 1908 : 73 P.L.R. 1907 ; *Udho Shah v. Hiru Shah*, 71 P.R. 1897.

Where the plaintiff has no cause of action independently of the promissory note, which cannot be admitted in evidence owing to the insufficient stamp, such a plaintiff cannot succeed in the suit, even if the defendant admits the claim, because in passing the decree the court will be "acting on" the promissory note in contravention of section 35 of the Indian Stamp Act. *Bally Singh v. Bhugwan Das*, 7 Bur. L.T. 95 : 23 Ind. Cas. 975 : 7 L.B.R. 1017. See contra, *Krishnaji v. Rajmal*, 24 Bom. 360 : 2 Bom. L.R. 25, where a decree was passed on proof of original consideration. See also *Mallappa v. Matum Nagu Chetty*, 42 Mad. 41 (49) : 35 M.L.J. 555 : 1918 M.W.N. 719 : 8 L.W. 522 : 24 M.L.T. 400.

When the party wants to set aside the instrument.—Where a suit was instituted to have the award set aside on the ground of misconduct on the part of the arbitrators, and the court called upon the plaintiff to pay duty and penalty on the award, held that the plaintiff cannot be called upon to pay the deficit stamp duty and penalty as the plaintiff did not want it to be acted upon and as the suit was instituted to prevent the award being acted upon. *Ma Shwe Pu v. Maung Po Dan*, 39 I.C. 382 : 11 Bur. L.T. 17.

Collateral purpose.—Although a document cannot be "acted on," still it can be used in evidence for a collateral purpose, *Fateh Chand v. Kisan*, 18 Bom. 614.

Unstamped endorsement.—A transfer by endorsement by mortgagee of his interest in the property is not admissible in evidence because not stamped, as such admission in evidence would be "acting upon" the endorsement. *Shankar Lal v. Sukhrani*, 4 All. 462 : (1882) 2 All. W.N. 108.

Objection as to want of proper stamp.—Objection as to want of proper stamp on reference to arbitration cannot be taken before the court in which the award is filed under s. 15 of the Arbitration Act, when the arbitrators have admitted it in evidence. *Bombay Co. Ltd.*

National Jute Mills Co., Ltd., 39 Cal. 669 : 16 Ind. Cas. 153. See also *Bajmash v. Ahmed Musaji Saleji*, 40 Cal. 219 : 17 C.W.N. 395 : 18 Ind. Cas. 978.

An objection that certain letters were inadmissible in evidence as each of them was not stamped as an acknowledgment under Art. 5 of Sch. II of Act XVIII of 1869 cannot be taken for the first time in appeal. *Dr. J. C. Morris v. The Simla Bank Corporation, Ltd. Simla*, 2 P.R. 1866 ; *Naraindas v. Sunt Lall*, 79 P.R. 1878 ; *Umba v. Harju*, 21 P.R. 1866. But if the admission of the instrument in evidence is tentative, that is, if it be only marked as an exhibit without any note that it is admitted in evidence, the objection can be taken at a later stage in the suit. *Sundar Dass v. The People's Bank of India, Ltd. of Rawalpindi*, 169 P.L.R. 1912 : 272 P.W.R. 1912 : 16 Ind. Cas. 834.

Objection in appeal.—An objection as to inadmissibility of an instrument cannot be taken for the 1st time in appeal. *Hari Singh v. Sahib Singh*, 28 P.L.R. 227 : 100 I.C. 733 : 1927 A.I.R. 371 (Lahore). An objection as to want of stamp cannot be taken for the first time in a second appeal. *Jadu Nath Chowdhury v. Kalidas Chandra*, 3 C.L.J. 41 : 2 Ind. Cas. 414.

Decision of objection.—Objection as to stamp is for the court to decide in a matter before the court, whether they should be sustained without any regard to the grounds taken. *R. D. Sethna v. Mirza Mahomed Shiraji*, 9 Bom. L.R. 1034.

Withdrawal of objection.—Notwithstanding the withdrawal of the objection in the lower Court as to admissibility of a document s. 35 of the Stamp Act is an absolute bar to the document (a bond) being acted upon unless it is stamped. *Guranditta v. Firm Gurdasmal Ramchand and others*, 1925 A.I.R. 552 (Lahore) : 7 L.L.J. 343 : 91 I.C. 772.

Admissibility of instrument with stamps not cancelled.—As to what is proper cancellation of stamp in a document see under ss. 12, 13, 14, 15. An instrument stamped with an adhesive stamp which is not properly cancelled cannot be used in evidence. *People's Bank of India Ltd. v. Abdul Karim*, 10 P.L.R. 1912 : 75 P.L.R. 1912 : 65 P.W.R. 1912 : 14 Ind. Cas. 512. See also *Sundar Das v. The People's Bank of India, Ltd. of Rawalpindi*, 169 P.L.R. 1912 : 272 P.W.R. 1912 : 16 Ind. Cas. 834. See also *Marung Ba Kyuan v. Ma Kye Kyee*, 2 L.B.R. 103 ; *Mi Ke v. Nga Kan Gyi*, 4 I.C. 1086 ; *Banarsi Prasad v. Fazal Ahmad*, 28 All. 298 : 3 A.L.J. 25 : 1906 A.W.N. 9 ; *Barham Deo Rai v. Ram Kishun Mahton*, 2 P.L.T. 184 : 60 I.C. 652.

Case of two separate stamps.—Where the term of a promissory note was embodied in two sheets of impressed stamp, the instrument being written on one sheet and the other being blank, held, that the instrument is not duly stamped as it is written in contravention of s. 13 of the Stamp Act and is inadmissible in evidence. *Messrs. Mohanlal Kunialal v. Kesorimull Chordiya*, 15 M.L.T. 203 : 23 Ind. Cas. 110.

Different kind of stamp.—When a promissory note was executed for Rs. 4,300 but was written on an impressed stamp with the word "Hundi" on the top and the words three rupees at the bottom of the impression, held, that the amount of duty being correct, the document is admissible in evidence. *Bank of Madras v. Subbarayalu*, 14 Mad. 32. A demand pro-note stamped with 4 quarter anna postage stamps is not duly stamped. It cannot be admitted in evidence under s. 35 of the Stamp Act, nor can the stamp be treated as a stamp of improper description within the meaning of s. 37 of the Indian Stamp Act. *Venkataraman Ganapat Hedge v. Shankaranarayana Bhat*, 19 Bom. L.R. 862 : 42 I.C. 947, doubted in *Kamakshi Ammal v. Subbaraya Chetty*, 52 Ind. Cas. 758 (Mad.). See also *Mu Pwa May v. S. R. M. M. A. Chettias Firm*, 55 I.A. 379 : 7 Ran. 624 : 32 Bom. L.R. 117 : 34 C.W.N. 6 : 51 C.L.J. 6 : 1929 M.W.N. 941 : 30 L.W. 481 : 6 O.W.N. 849 : 1929 A.I.R. 379 (P.C.), where it was held that if a document bearing a stamp of improper description has been admitted by trial court such admission cannot be challenged in a higher court.

Case of an altered instrument.—When an instrument has been materially altered it must be stamped afresh with fresh stamps. If it is not so stamped it is an unstamped document within the meaning of s. 15 of the Stamp Act and therefore inadmissible in evidence. *Tribeni v. Sahu*, 11 Bur. L.T. 257 : 50 I.C. 517 : *Gowd Chandra Das v. Prasanna Kumar Chandra*, 33 Cal. 812 : 3 C.L.J. 363 : 10 C.W.N. 783. See *Lakshammal v. Narasingha Raghava Bhyangor*, 38 Mad. 746 (750) and other cases under s. 14, *supra*. A material alteration in an instrument does not destroy the original debt. *Dula Meah v. Moulavi Abdul Rahaman*, 28 C.W.N. 70 (71) : 1924 A.I.R. 452 (Cal.). A material alteration destroys the right of action on an instrument, Nothing can be recovered on it even if the debtor admits receipt. *Pandurang v. Kishan*, 19 N.L.R. 79 : 74 I.C. 20 : 1923 A.I.R. 295 (Nag.).

Admissibility of unstamped documents.—In *Maharajah Rajundur Kishwar Singh Bahadoor v. Sheopursun Misser*, 10 M.I.A. 438 (452) : 5 W.R.P.C. 55 the Privy Council observed : "The sudder Ameen should have allowed the defendant to get his documents stamped, and, if necessary should have adjourned the hearing for that purpose. The Court, however, excluded them from evidence, as unstamped, and as documents which were inadmissible unless stamped. The plaintiff ought not in any way to be prejudiced by this neglect of the defendant, and to allow the defendant to reargue these questions as to the *Birt* tenure in another suit would be a serious injustice and wrong to the plaintiff. The proper course, then, to be adopted is to reverse the decision of the sudder Ameen, and to remand the cause to the lower Court, not for the purpose of taking further evidence, or of hearing the cause on fresh materials other than stamped documents, but to enable the defendant to get the instrument stamped. The inferior Court should then decide on the evidence already taken in the cause, and on those documents, if stamped, with reference to all the issues raised on the cause, giving a complete decision on them all." The case was remanded to the High Court with directions to send the cause to the Zilla

Court for retrial, on the issue of the Birt tenure, giving the respondent an opportunity of having the unstamped documents stamped, if he shall be so advised, but making him liable for the costs of the first trial. See this case discussed in *Babu Gour Prasad Singh and others v. Lalla Nand Lal, Manager*, 7 W.R. 439.

Where an insufficiently stamped document is filed before a court, the court may either reject it or it might, under the Acts and Regulations in force, have required the insufficiency to be remedied and proper penalty paid. *Mantappa Nadgowda v. Basuruntrao Nadgowda*, 14 M.I.A. 24 : 15 W.R. 33 P.C.

Effect of not duly stamping an instrument.—S. 35 of the Stamp Act provides, that no instrument chargeable with duty shall be admitted in evidence for any purpose, unless such an instrument is duly stamped. The instrument in question not being duly stamped is inadmissible in evidence. *Rustomji Ardeshir Irani v. Vinayak Gangadhar Bhal and others*, 35 Bom. 29 (33) : 12 Bom. L.R. 723 : 7 I.C. 955; *Jat i Parshad v. Brij Raj Sharan*, 52 P.L.R. 1922 : 68 I.C. 461. When a document which is required to bear a stamp, is not duly stamped, such omission to stamp does not affect the validity of the document but renders the instrument inadmissible in evidence. *Jayman Bewa v. Easin Sardar*, 53 Cal. 515 : 30 C.W.N. 609 : 43 C.L.J. 493 : 95 I.C. 483 : 1926 A.I.R. 877 (Cal.).

Account.—An account signed by the party but not duly stamped and showing the balance up to date, and containing a promise to pay off the balance cannot be received in evidence in support of a claim to interest on the balance, but is admissible in evidence as a proof of the admission of the balance then due. *Dhondu Jagannath v. Narayan Ramchandra*, 1 Bom. H.C.R. 47.

But where the plaintiff and the defendant had various monetary dealings and payments by the defendant at various times were entered in an account book headed "account current," the account was adjusted and the defendant admitted and signed the account B. and O. E. which was carried forward. *held*, that the account need not bear any stamp. *Galstoun v. Hutchison*, 39 Cal. 789 : 16 C.W.N. 945 : 15 Ind. Cas. 979.

Acknowledgment.—An unstamped acknowledgment cannot be acted upon for want of stamp as an acknowledgment of particular sum due. *Fatechand Harchand v. Kisan*, 18 Bom. 614 (616) ; *Mulji Lala v. Linga Mukaji*, 21 Bom. 201 F.B. ; *Ramdas v. Inayat Ullah*, 45 All. 374 : 21 A.L.J. 263 : 1923 A.I.R. 297 (All.) : 71 I.C. 1027.

Agreement.—A claim for value or return of goods delivered to defendant cannot be proved by an unstamped agreement between the parties, but the plaintiff can succeed on proof of delivery to defendant. *Chami v. Ana Patter*, 33 Ind. Cas. 661.

Recited in a petition to court.—Although in *Billings v. The Unconvenanted Civil Service*, 3 All. 781 at p. 786 a petition to court containing an agreement to pay a barred debt was held to come under Art. 11 Sch. II of Act XVIII of 1869 still in the later cases of *Pitambar Gain v. Uddhab Mondol*, 12 C.W.N. 59 ; *Reference*, 8 Mad.

15; *Emperor v. Ram Saran Lal*, 40 All. 19, courts of law did not express any such opinion.

Letter of assignment.—A letter of assignment of money due to the assignor in favour of a creditor, if unstamped, is not admissible in evidence, *Doraiswami Mudaliar v. M. Doraiswami Iyengar*, 87 I.C. 382; 48 M.L.J. 432; 1925 M.W.N. 180; 1925 A.I.R. 753 (Mad.).

Oral evidence.—Oral evidence cannot be admitted to prove the execution of an unstamped mortgage bond of 1841 which is not produced in evidence, and also of delivery of possession under the deed, as the admission of such evidence will be to give effect to an unstamped document, *Thaji Beebi v. Tirumalaiappa Pillai*, 30 Mad. 386; 17 M.L.J. 308.

Admissibility of copies of an unstamped instrument.—The provisions of the Stamp Act as regards unstamped or insufficiently stamped instruments have no application when the original is not produced. The said provisions deal with and exclusively refer to admission in evidence of original documents, hence a copy of the original document cannot be admitted in evidence even on payment of penalty and insufficient stamp or by an endorsement by the Collector, *Raju of Bobbili v. Inuganti Chinnai Sitaramasami Garu*, 26 I.A. 232; 23 Mad. 49; 4 C.W.N. 117 P.C.

The plaintiff sued on an unstamped bond entered in his account book. He filed the original with the plaint but took away the original book leaving a copy, which was compared with the original and found to be correct and kept on the record. The original was stolen from his house before the final hearing of the suit. It appeared at the trial that the bond was not properly stamped; *held*, that secondary evidence of the contents of an unstamped document cannot be admitted in evidence, although the same may have been lost or destroyed. The production and presentation of a document in court is in no way identical with the admission of a document in evidence, *Muhammed Ayub v. Rohim Baksh*, 3 Lah. 282; 69 Ind. Cas. 723; 1923 A.I.R. 401 (Lah.). See also *Rahim Baksh v. Muhammad Ayub* 1922 A.I.R. 354 (Lah.). When the original cannot be admitted in evidence for want of proper stamp, a copy of the same cannot be admitted in evidence even if the necessary stamp is offered, *Nanak Chand v. Muhammad Afzal*, 33 P.R. 1913; 11 P.L.R. 1913; 279 P.W.R. 1913; 16 Ind. Cas. 950. See also the case of *Sukh Dial v. Mami Ram*, 29 P.R. 1915; 29 P.L.R. 1915; 27 I.C. 489 where the award was not duly stamped yet the secondary evidence was allowed as the definition of the words 'instrument of partition' does not preclude such admission in evidence, *Hiralal Ramnarayan v. Shankar Hirachand*, 45 Bom. 1170; 23 Bom. L.R. 506; 62 Ind. Cas. 637; *Kallu v. Halki*, 18 All. 295; (1896) A. W. N. 68; *Baldea Das v. Jai Ram* (1899) 19 All. W. N. 210; *Kopasan v. Shamu*, 7 Mad. 440.

Secondary evidence of an instrument which is not stamped and not produced, is not admissible in evidence. *Maung So v. Maung Pyi*, U.B.R. (1892-1896) Vol. II, 631. See also *Mnung Po H Too v. Ma Ma Gyi*, 4 Rangoon 363; 101 I.C. 198; 1927 A.I.R. 109 (Ran.). No secondary evidence of the contents of an unstamped letter can be

given as the letter itself is not admissible in evidence. *Doraiswami Mudaliar v. M. Doraiswamy Aiyangar*, 48 M.L.J. 432 : 1925 M.W.N. 186 : 1925 A.I.R. 753 (Mad.) : 87 I.C. 382.

Lost Instrument.—Where a lost document is shown not to bear a stamp, penalty must be paid before the document can be admitted in evidence. *Haran Chandra Bhoore v. Russick Chunder Neogy*, 20 W.R. 63.

Copy of a lost instrument.—A copy of an instrument which is lost and not stamped, cannot be admitted in evidence. *Ranga Rau v. Bharayamma*, 17 Mad. 473 : 4 M.L.J. 192 ; *Sheikh Akbar v. Sheikh Khan*, 7 Cal. 256 : 8 C.L.R. 533 ; *Kallu v. Halki*, 18 All. 295 : (1896) 16 All. W.N. 68 ; *contra see Haran Chandra v. Russick Chunder*, 20 W.B. 63.

Under the Stamp Act of 1899 only the original instrument can be validated on payment of deficit stamp duty and penalty and received in evidence, therefore a copy of an improperly stamped original, when lost, cannot be admitted in evidence. *Pentayya v. Kesho Rao*, 11 N.L.R. 68 : 56 Ind. Cos. 249. See *contra*, *Sennandan v. Kollakiran*, 2 Mad. 208 where it was held that secondary evidence tendered to prove the contents of a document, not produced by the other side after notice to produce, can only be admitted in the absence of evidence that it was not stamped when last seen.

Onus of proof.—Where an instrument is lost or destroyed there is a presumption that it was duly stamped. The onus lies on the party objecting to prove that it was unstamped, and the onus is shifted if it was proved that the instrument was not stamped at a particular time. *The Marine Investment Company v. Hariside*, L.R. 5 H.L. 624 : 42 L.J. 173.

Insufficiently stamped documents can be admitted for a collateral purpose.—The rule is that an unstamped or insufficiently stamped instrument may be proved for a purpose collateral to the subject of the claim but not for the purpose of proving the subject of the suit. *Matheson v. Ross* 2 H.L.C. 286. Unstamped documents can be admitted in evidence when tendered, not for the purpose of giving effect to the document but for a collateral purpose. *Rustomji Edulji Croos v. Curestji Sorabjee Croos*, 4 Bom. 349. See also *Dhondu Jagannath v. Narayan Ramchandra*, 1 Bom. H.C.R. 47. Although a notice of allotment of shares cannot be proved for want of stamp still it can be proved that such notice was issued. *Mohunlal v. Gangaji Cotton Mills Co.*, 4 C.W.N. 369. Documents although not stamped or improperly stamped can be admitted in evidence for a collateral purpose. *Fatehchand Harchand v. Kisan*, 18 Bom. 614. See also *Thaji Beebi v. Tirumalaiappa*, 30 Mad. 3867 : 14 M.L.J. 308 ; *Mulji Lala v. Lingu Makaji*, 21 Bom. 201. An insufficiently stamped promissory note cannot be admitted in evidence as an acknowledgment of the debt set out in itself, but it may serve as an acknowledgment of a prior and re-existing independent debt. *Gopala Padayachi v. Raja Gopala Naidu*, 1926 M.W.N. 757 : 98 I.C. 75 : 1926 A.I.R. 1148 (Mad.). See also *Kanhaya Lal v. Stowell*, 3 All. 581 F B.

There is no bar whatsoever to prevent a court from using an insufficiently promissory note as a piece of evidence in support of the plaintiff's story, *Abinash Chandra Bose v. Nogendra Nath Dutt*, 53 C.L.J. 254 (256): 1931 A.I.R. 480 (Cal.): 134 I.C. 575; *Chokkalingam Chetty v. Annamalai Chetty*, 34 I.C. 417.

Contra.—An insufficiently stamped promissory note is not admissible in evidence even for a collateral purpose, i.e., as a proof of an acknowledgment under s. 19 of the Indian Limitation Act. The word 'instrument' in s. 35 does not qualify the meaning of the words 'for any purpose', *Bishunath Singh v. Ishri Dayal*, 5 O.W.N. 750: 112 I.C. 247: 1928 A.I.R. 408 (Oudh). See also *Ali Mahammad v. Jagannath Prasad*, 26 A.L.J. 823: 1928 A.I.R. 666 (All.).

Where the pro-note contained additional matters.—Where a promissory note contains the usual terms and stated in addition that Rs. 540 was due in settlement of a previous account, there is nothing in the Stamp Act which shuts out the additional statement in the promissory note. What is shut out by s. 35 is the instrument and not the collateral matters connected with the instrument which may be mentioned in the same papers or in the same writing; *V. R. Rakkappan Ambalam v. C. Suppiah Ambalam*, 32 L.W. 691: 124 I.C. 53: 1930 A.I.R. 485 (Mad.).

Nature of penalty.—The levy of a penalty authorized under proviso (1) of section 34 (now s. 35) of the Indian Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution, *Narayanan Chetti v. Karuppathan*, 3 Mad. 251. The penalty cannot be regarded as strictly within the designation of costs, *Ishar Das and others v. Masud Khan*, 6 All. 70 (71).

Condition.—When no stamp duty is leviable on the instrument under the Stamp Act in force, at the time of execution, no penalty can be recovered, *Reference under the Stamp Act, s. 46*, 14 Mad. 255.

Pauper.—A pauper cannot claim exemption from liability to pay any further stamp duty or penalty in respect of a document on which he relies and which owing to insufficiency in duty is inadmissible in evidence. *Golam Guffoor v. Ekram Hossein Chowdhury & others*, 10 W.R. 357.

Admission of instruments on payment of penalty.—A court has jurisdiction to admit an instrument on payment of duty and penalty as provided under s. 35 of the Stamp Act. *Jacob Rodrigues v. Peter Ferrnandu*, 19 M.L.J. 35: 5 M.L.T. 135: 2 Ind. Cas. 481 F.B. See also *Tricomji Damji v. Virji*, 24 Bom. L.R. 820: 67 Ind. Cas. 965. But a copy of a document which is not stamped cannot be admitted in evidence even on payment of duty and penalty in respect of the original. *Lala Nanak Chand v. Muhammad Afzal*, 11 P.L.R. 1913: 279 P.W.R. 1913.

Court has no jurisdiction to demand penalty after disposal of a case.—A Court has no jurisdiction, after a case has been disposed of finally by it, to pass an order under s. 35 of the Stamp Act directing a party to deposit stamp duty and penalty in respect of an insufficiently stamped document filed in the case, *Khetra Mohan Saha v.*

Jamini Kanta Dewan, 54 Cal. 445 : 100 I.C. 630 : 1927 A.I.R. 172 (Calcutta).

Jurisdiction of court to refuse to accept penalty.—Where an un-stamped instrument, admissible in evidence on payment of duty and penalty, was tendered in evidence with an offer of payment of duty and penalty, the court before which the instrument is produced cannot reject the instrument on the ground that it cannot determine the amount of stamp duty and penalty owing to the damaged condition of the instrument. The terms of proviso (a) to s. 35 are mandatory and the judge is bound to admit the instrument unless it is rendered inadmissible in evidence by the provisions of any other statute for the time being in force. The words "subject to all just exceptions" in the proviso to the section do not permit a court to reject a document. *Bhimsena Rao v. Venugopal Mudali*, 48 Mad. 631 : 48 M.L.J. 384 : 1925 M.W.N. 190 : 21 L.W. 672 : 88 I.C. 443 : 1925 A.I.R. 725 (Mad.). The effect of the proviso to s. 35 is that when an instrument not excepted under the proviso and insufficiently stamped, is tendered in evidence, the court is to accept it on payment of penalty and the person can compel the court to accept it if he pays the duty and penalty. *Nathu Gangaram v. Hansraj Morarji*, 9 Bom. L.R. 122. An opportunity should be allowed to a party to pay the deficit stamp duty and penalty under s. 35, before the court can hold that a surety bond is inadmissible in evidence for want of stamp duty, *Bahagat Ram and others v. Rattan Chand and others*, 127 I.C. 361 : 1930 A.I.R. 854 (Lahore).

Proviso (a).—Under the old Act of 1860 the party producing the instruments if insufficiently stamped, could recover no more than the amount on which Stamp was paid. See *Syed Keramat Ali Mutwalli v. Moonshree Abdul Wahab*, 17 W.R. 131. But later Acts have introduced a change and differ from the old Act of 1860. See the case of *Mantappa Nadgawda v. Baswuntrao Nadgawda*, 14 M.L.A. 24 : 15 W.R. 33 P.C.

The proviso (a) to s. 35 provides that on payment of penalty the courts are to admit documents in evidence. *Kumar Brojo Mohan Sinyh v. Lachmi Narayan Agarwalla*, 5 Pat. L.J. 660 : 1 Pat. L.T. 360 : 1920 Pat. C.W.N. 289 : 56 Ind. Cas. 184. See also *Mulji Bechar v. Jetha Jeshankar*, 10 Bom. 239 (a case under Act I of 1879). "The proviso (a) of sec. 35 of the Indian Stamp Act, 1899, is of equal ambit with the body of the section, and that just as an instrument cannot be acted upon, that is to say, nothing can be recovered under it unless it bears a proper stamp, so the proviso provides that if there is not a proper stamp it may be put on afterwards on payment of a penalty and the instrument then becomes effective". *Lachmi Narayan Agarwalla v. Rameshwar Prasad Singh*, 51 I.A. 332 : 4 Pat. 34 : 5 P.L.T. 570 : 29 C.W.N. 296 : 40 C.L.J. 443 : 26 Bom. L.R. 1140 : 47 M.L.J. 300 : 82 I.C. 789 : 1921 A.I.R. 22 (P.C.). The proviso (a) is applicable to documents compulsorily registrable. *Biswanath Bhattacharjee v. Govinda Chandra Das and others*, 29 C.L.J. 305 (310) : 23 C.W.N. 534 : 57 I.C. 88.

No penalty can be levied on account of increased stamp duty. There would be no justification for the levy of a penalty on

account of the increased stamp duty leviable under the Act in force at the date of presentation over that leviable under the Act in force at the date of execution, *Narayanan Chetty v. Karuppathan*, 3 Mad. 251 (253) F.B.; *Reference under stamp Act*, 14 Mad. 255. But *contra*, the duty and penalty should be determined in accordance with the Act in force at the time of execution. *In re Deri Ditta Mal*, 7 P.R. 1885 (Rev.).

The proviso (a) provides that the amount required to make up the deficiency is to be paid. The old law was also the same. For old law, see, *Balaji v. Krishnaje*, 6 Bom. H.C.R.A.C. 95. But if the stamp be less than the proper amount then it cannot be taken into consideration. *Reference under Stamp Act*, 15 Mad. 259 F.B. See also *Reference under Stamp Act*, 8 Mad. 87.

Calculation of duty and penalty.—To determine whether any penalty is due upon a document executed prior to the Act, it is necessary to look to the Act in force at the execution of the instrument, in order to see whether the document was “duly stamped” and what is chargeable as duty, wholly unpaid or as deficit duty. The penalty will be in accordance with the Act in force at the time the question arises.

A certain procedure to determine the amount of penalty to be levied on all documents not duly stamped, whether executed before or after the existing Stamp Act came in force, is prescribed in sections 34 and 35 (now sections 35 and 40) of the Stamp Act. That procedure requires that the stamp duty chargeable (*i.e.* originally payable at the date of execution and not paid) shall be levied together with a penalty of only Rupees 5 except in cases in which ten times the proper duty originally payable or the deficit portion thereof, exceeds 5 rupees, in which case the penalty to be levied is a penalty of a sum equal to ten times such duty or portion. Thus in the case of a document executed in 1869, in which the stamp duty properly payable is Rs. 100 and the stamp paid was Rs. 99-8 the amount to be paid is 8 annas plus Rs. 5 penalty; but if 90 rupees were paid in stamp then the amount to be levied is Rs. 10 plus Rs. 100 as penalty being ten times the deficiency. *Reference under the Stamp Act*, 5 Mad. 394 F.B.; 35 P.R. 1885. See also *In re Deri Ditta Mal*, 7 P.R. 1885 (Rev.).

But it should be borne in mind that under s. 35 the duty and penalty is leviable “by any person having by law or consent of parties authority to receive evidence” when admitting a document in evidence. Under s. 40, the duty and the penalty is leviable by the Collector when he impounds any instrument under s. 33 or when an instrument is sent to him under s. 38. *The language of clause (a) of s. 35 is different from the language used in clause (b) s. 40 (1).* As the languages are different the dictum in 5 Mad. 394 is to be modified in accordance with the language used in the present Act.

Wrong Stamp.—Where a document is really a bond, but was stamped as a promissory note, and as such was stamped with an adhesive stamp of one anna, in calculating the penalty it should be treated as insufficiently stamped and the stamp already paid to be taken into account. The document should not be treated as

wholly unstamped merely because wrong stamp was put on.* *The Collector of Rangoon v. Abdul Rahaman Sircar*, 11 L.B.R. 316 : 1922 A.I.R. 27 (L.B.) : 67 I.C. 640. See s. 37 of this Act.

Negotiable Instrument.—Hundi—The plaintiff gave up his rights under a mortgage in consideration of cash payment of Rs. 1,000 and a *hundi* for Rs. 400 executed in his favour by the mortgagor, and returned the mortgage bond with an endorsement on the back to the effect that the mortgage bond has been satisfied. When a suit was brought on the *hundi* it was found to be insufficiently stamped, *held*, as there is no cause of action independently of the *hundi*, which is not admissible in evidence owing to insufficient stamp, the plaintiff must fail. *The Firm of Bhagat Ram Ganpat Rai through Kala Ram and Girdhari Lal v. Chajju Ram*, 5 P. W. R. 1918 : 44 Ind. Cas. 886 ; *Chenbasapa v. Lakshman Ramchandra*, 18 Bom. 369.

Where a suit was brought on two *hundis* payable within thirty days from the date of execution but the *hundis* were found to be insufficiently stamped, *held* the *hundis* are inadmissible in evidence and as no oral evidence is admissible to prove the contents of the *hundis*, the suit must fail. *Govind Kumar Sur v. Ram Chandra Bhattacharya*, 29 C.L.J. 509. See also *Ram Bahadur v. Dusuri Ram*, 17 C.L.J. 399.

Where money was paid shortly after execution of a *hundi*, which was found to be insufficiently stamped and consequently inadmissible in evidence, *held*, the plaintiff cannot recover on the original consideration as the plaintiff had no cause of action independently of the *hundi*, *Chanda Singh v. The Amritsar Bankiny Co.*, 66 Ind. Cas. 201 : (1922). A.I.R. 307 (Lah.).

Promissory notes.—The word "Promissory Note" as used in s. 34 (now s. 35) means an unconditional promise to pay. Thus where the obligor executes a promissory note conditional on the obligee remitting a further sum and stipulating that the whole amount would be returnable with interest, *held*, that the instrument was not a promissory note. *Bharat Pisharodi v. Vasudeban Nambulri*, 27 Mad. 1 : 14 M. L. J. 65. See also *Dhondbhat Nurbarbhat v. Almaram Moreshwar*, 13 Bom. 669 ; *Nathoobhai Dullahhai Seth v. Himatlal Vastachand Dalal*, 23 Bom. L.R. 1231 where the agreement was that the amount is payable at convenience ; *Channamma v. Anyanna*, 16 Mad. 283 ; *Narayanadasami v. Lokambalammal*, 23 Mad. 156 note. An instrument containing an unconditional promise to pay a certain sum of money with interest annully, is not a promissory note. *Joti Parshad v. Brij Raj Sharan*, 52 P.L.R. 1922 : 68 I.C. 461 : 1923 A.I.R. 29 (Cal.) : 5 L.L.J. 148.

When a suit may be on the original consideration.—The distinction as to a suit for original consideration and a suit based on a *hundi* when the *hundi* is inadmissible has been clearly set out in the case of *Sheikh Akbar v. Sheikh Kkan*, 7 Cal. 256 : 8 C.L.R. 533, where the Calcutta High Court said : "where a bill or note is taken by a creditor on account of a debt and it is not paid at maturity, the creditor may disregard the bill or note and sue for the original

consideration but where the original cause of action is the bill or note itself, and does not exist independently of it then there is no cause of action for money lent or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note itself and no other."

Where money is lent and a bill or note is given for the loan which is not paid at maturity, the creditor may disregard the note and sue for the original consideration, as an implied contract to repay money lent arises from the fact that the money is lent even though no express promise either written or verbal is made to repay it. (The High Court held that that was a cause of action independently of the loan) *Pramatha Nath Mandal v. Dwarkanath Dey*, 23 Cal. 851 followed in *Sudhir Chandra v. Kamal Chandra*, 50 I.C. 503 at page 508, where it was held that the Court may give a go by to the insufficiently stamped *hundi* and allow the plaintiff to succeed on the original consideration.

In *Radhakant Shaha v. Abhay Charn Mitter*, 8 Cal. 721 (724): 7 C.L.R. 88, in a suit on a *hundi* the Calcutta High Court held that if the consideration for the bill is an independent cause of action complete in itself before the bill was given, then the original amount can be recovered if the bill cannot be proved for want of proper stamp; but if it is stated in the plaint that the amount was advanced upon the bill in suit, then if the bill cannot be proved the original consideration cannot be recovered. Where there is a note independently of the note the creditor is not debarred from suing on the original cause of action by the fact that the cause of action arose out of the same transaction in the course of which the promissory note was executed, *Abdul Rabbani v. Shyam Lal Thapa*, 34 C.W.N. 554.

A transaction by a promissory note may be one of the three kinds, "either the contract may be considered as contained wholly in the promissory note or bill of exchange as in illus. (b) to s. 91 of the Indian Evidence Act, in which case I apprehend that if the plaintiff could not sue on the promissory note he could not sue at all; or secondly as in *Krishnaji v. Rajmal*, (24 Bom. 360 : 2 Bom. L. R. 25) the promissory note may be regarded as a conditional payment of the amount of the loan in which case, of course, if the promissory note is insufficiently stamped, it is only a worthless piece of paper and the plaintiff can sue on the original loan or, thirdly, the promissory note may be passed as security for the loan in which case there is no necessity for the plaintiff to sue on the promissory note at all and whether it is properly stamped or not he can bring a suit on the loan." *Jacob & Co. v. A. P. Vicumsey*, 29 Bom. L.R. 432 : 102 I.C. 138 : 1927 A.I.R. 437 (Bom.).

Where the promissory note written in a *bahi* was not the original contract and was a mere collateral security or instrument, by which payment of the original debt might be facilitated i.e., when the cause of action was complete before the promissory note was executed and there is an independent admission of the loan quite apart from the promissory note, the plaintiff is entitled to maintain his suit on the original contract. *Hakim Rai v. Ganga Ram*, 7 Lahore, 206 : 8 L.L.J. 111 : 27 P.L.R. 273 : 94 I.C. 633 : 1926 A.I.R. 340 (Lah.); *Ram Saran Das v. Tulsi Ram*, 65 I.C. 565.

When a plaintiff sues on a promissory note simply and solely without adding an alternative cause of action based on the original loan, he should be allowed to succeed on such original cause of action after necessary amendment. *Maung Shwe Myat v. Maung Po Shim and another*, 3 Rangoon 183 : 1925 A.I.R. 282 (Rangoon). See also *Dawson's Bank, Ltd. v. C. R. V. V. Chetty*, 1 Ran. 121 : 1923 A.I.R. 254 (Rangoon). *Maung Kyi v. Ma Ma Gale*, 10 L.B.R. 54 : 12 Bur. L. T. 131 : 54 I.C. 84 718 ; *Ismail Hoosain v. Purbhubbhai*, 6 Ran. 415 : 112 I.C. 254 : 1928 A.I.R. 242 (R.) ; *Ram Raghbir Lal and others v. The United Refineries, (Burma)*, 9 Rangoon 56 : 134 I.C. 734. See also *Ankur Chunder Ray v. Madhub Chunder Ghose*, 21 W.R. 7 ; *Prasunno Nath Lahiree v. Tripoora Soonduree Dabee*, 24 W.R. 88 ; *Moti Lal Saha v. Monmohan Gossami*, 5 C.W.N. 56 ; *Golapchand Murwari v. Thakurani Mohokoom Kooaree*, 3 Cal. 314 ; *Sudhir Chandra Das v. Gobind Chandra Ray*, 45 Cal. 538 : 21 C.W.N. 1043 : 41 I.C. 503 ; *Baisnab Charan v. Ramdhan*, 11 C.W.N. 139 ; *Govinda Kumar Sur v. Ram Chandra Buattacharjee and others*, 29 C.L.J. 508 ; *Hari Mohan Ghosh v. Sourendra Nath Miller*, 41 C.L.J. 531 ; *Parbati Charan v. Amarendra Nath*, 53 Cal. 418 : 96 I.C. 97 : 1926 A.I.R. 831 (Cal.).

Where there is a completed contract between the plaintiff and the defendant independently of a promissory note, which is found to be unstamped, but was merely received by the plaintiff on account of the advance previously made by the plaintiff to the defendant, *held* that the document is admissible in evidence. *Yarlagadda Veeraraghavyya and others v. Garantla Ramayya*, 29 Mad. 111 : 15 M.L.J. 484 ; *Valiappa v. Mahomed Khasim*, 5 Mad. 166. See also *Krishnaji Narayan v. Rajmal Manick*, 24 Bom. 390 : 2 Bom. L.R. 25 F.B. ; *Chenabappa v. Lakshman*, 18 Bom. 369 ; *Almaram v. Umedram*, 25 Bom. 616 ; *Rustomji Ardeslhir Irani v. Vinayak Gangadhar Bhat*, 35 Bom. 29 ; *Virbhadrappa v. Beimaji*, 28 Bom. 432 : 6 Bom. L.R. 436 ; *Kiam-ud-din v. Rajjo*, 11 All. 33 ; *Baij Nath Das v. Salig Ram*, 16 Ind. Cas. 33 ; *Srinath Das v. Angul Singh*, 7 All. L.J. 459 : 6 Ind. Cas. 126 ; *Narain Das v. Jessowal*, 15 S.L.R. 135 : 65 Ind. Cas. 37 ; *Jawahir Singh v. Lachman Das*, 3 O.C. 195 ; *Rachu Lal v. Kandhari Lal*, 6 O.C. 16 ; *Bahadur Khan v. Abdul Saheb*, 24 O.C. 137 : 8 O.L.J. 76 : 61 Ind. Cas. 203 (205) ; *Tapiram v. Jugal Kishore*, 21 N.L.R. 129 ; *Banarsi Prasad v. Fazal Ahmad*, 28 All. 298 : 3 A.L.J. 25 : 1906 A.W.N. 9 ; *Bageshri Dayal v. Pancho*, 28 All. 473 : 3 All. L.J. 314 : 1906 A.W.N. 89 ; *Hira Lal v. Data Din*, 4 All. 135 ; *Parsotam Narain v. Talcy Singh*, 26 All. 178 : 1903 A.W.N. 217 ; *Ram Sarup v. Josadha Kunwar*, 34 All. 158 : 9 All. L.J. 72 : 13 I.C. 138 ; *Jagan Prasad v. Indar Mal*, 36 All. 259 : 12 A.L.J. 361 : 23 I.C. 589 ; *Salig Ram v. Radhashyam, minor etc.*, 134 I.C. 254.

Where the contract to pay was made before the execution of the promissory note, which is not properly stamped, *held* that the cause of action being prior to the execution of the pro-note, the suit for money due is maintainable although the pro-note is insufficiently stamped. *Saminath v. Radha Krishna*, 23 I.C. 85 (Mad) ; *Mayen v. Alston*, 16 Mad. 238 ; *Pulugurta Somaraju v. Machiraju Venkata Subbarayudu*, 85 I.C. 389 : 1925 A.I.R. 351 (Mad.) ; *Shanmuganatha Chettiar v. Srinivasa Aiyar*, 40 Mad. 727 : 31 M.L.J. 138 : (1916) 2 M.W.N. 14 : 4 L.W. 27 : 20 M.L.J. 172 : 35 I.C. 219.

When the promissory note is taken for an antecedent debt, the promissory note only operates as a suspension of the ordinary remedy until it matures or is enforced. If the promissory note is unenforceable then the ordinary remedy on the original note is revived and is enforceable provided it is not barred by limitation, *Anantanarayana Iyer v. Savithri Ammal*, 36 Mad. 151 (156) : 22 M.L.J. 231 : 1912 M.W.N. 59 : 13 I.C. 458; *Natarajulu Naicker v. Subramaniam Chettiar*, 45 Mad. 778 : 43 M.L.J. 695 : 1922 M.W.N. 450 : 16 L.W. 705 : 69 I.C. 939 : 1922 A.I.R. 187 (Mad.); *Puthu Reddiar v. Chidambara Reddiar*, 1931 M.W.N. 390. See also *Chokkalangam Chetty v. Annamalai Chetty*, 34 I.C. 417 which was a case of an unstamped chit given in settlement of account.

A plaintiff may succeed in his suit for recovery of money but even if the promissory note executed in his favour cannot be proved for want of sufficient stamp if the suit be for the recovery of money-lent. *Nankhu Singh v. Girija Bux Singh*, 5 Luck. 225 : 6 O.W.N. 649 : 119 I.C. 865 : 1929 A.I.R. 399 (Oudh). See also *Bishunath Singh v. Ishri Dhyal*, 5 O.W.N. 750 : 112 I.C. 247 : 1928 A.I.R. 408 (Oudh).

When a contemporaneous receipt is given.—Where a promissory note is taken for a contemporaneous debt, the execution of the promissory note does not discharge the debt, but only suspends the creditor's ordinary remedy on the debt during the currency of the promissory note. *Gopala Padayachi v. Raja Gopala Naidu*, 1926 M.W.N. 757 : 98 I.C. 75 : 1926 A.I.R. 1148 (Mad.).

If a promissory note is inadmissible in evidence because it is insufficiently stamped, a suit to recover the principal debt based on a contemporaneous receipt mentioning the loan and referring to the promissory note is maintainable. If there be an agreement to pay interest it is to be stamped as an agreement, hence it will be inadmissible in evidence, *Govind Singh v. Bijoy Bahadur Singh*, 52 All. 169 : 27 A.L.J. 1279 : 121 I.C. 108 : 1929 A.I.R. 980 (All.).

A suit for money does not necessarily fail if the instrument upon which it is based is found to be inadmissible in evidence on account of its being insufficiently stamped or not stamped at all. A distinction is made between the class of cases where the loan is advanced and the cause of action for the money is complete and subsequently the debt or gives a bill or note to the creditor for payment of the money, and the class of cases where the original cause of action is the bill or note itself, and does not exist independently of it. Apart from the instrument there is always a contract to repay a loan, and such contract can be proved independently of the instrument. *Dhaneswar Saha v. Ramrup Gir*, 7 Patna 845 : 9 P.L.T. 471 : 111 I.C. 482 : 1928 A.I.R. 426 (Patna). See also *Suraj Lal v. Anant Lal* 1 P.L.T. 203 : 55 I.C. 556; *Abdul Muhammad Khan v. Mahananda Upadhyaya*, 11 Patna 135.

Merger—A claim founded on the original consideration can be enforced provided that the original consideration has not merged in the bond or the promissory note which is excluded from evidence.

Ram Bahadur v. Dusari Ram, 17 C.L.J. 399 : 17 I.C. 840 ; see also *Dula Meah v. Moulari Abdul Rahaman*, 28 C.W.N. 70 : 1924 A.I.R. 452 (Cal.)

Where the plaintiff cannot be allowed to recover.—The plaintiff cannot be allowed to recover the amount lent, unless the consideration for the bill is an independent cause of action complete in itself before the bill was given. *Radhakanta Shaha v. Abhoy Churn Mitter*, 8 Cal. 721 : 11 C.L.R. 310. See also *Manick Chund v. Jomoonna Dass*, 8 Cal. 645 : 7 C.L.R. 88 ; *Mothura Mohan Ray v. Peary Mohan Shaw*, 4 Cal. 259 : 2 C.L.R. 409 ; *Prosunna Nath v. Tripoora Soonduree*, 25 W.R. 88.

When the defendant executed a promissory note which was not stamped held, that the plaintiff cannot recover on the promissory note. *Pathi Reddi v. Velayudasivan*, 10 Mad. 94. No decree can be passed in a suit based on an unstamped promissory note, but if the suit be for money advanced then evidence may be given of the passing of consideration independently of the note, *Kodali Mollaya v. Tangoppala Ramaya*, 21 M.L.J. 462 : 8 M.L.T. 151 : 10 Ind. Cas. 177. See also *Gunga Ram v. Anir Chand*, 66 P.R. 1906 : 73 P.L.R. 1907 ; *Chenbasappa v. Lakshman Ramchandra*, 18 Bom. 369.

The condition precedent of the application of s. 120 of the Negotiable Instruments Act is that there must be a properly stamped Bill of Exchange before the Court. When the cause of action of a suit for recovery of a debt is based on a hundi and the hundi alone, the plaintiff cannot be allowed to sue for the debt independently of the hundi and if the hundi is not properly stamped, it is not receivable in evidence. *Chotey Lall v. Girraj Kishore and another*, 48 All. 332 ; 93 I.C. 63 : 1926 A.I.R. 350 (Allahabad).

The plaintiff originally based his suit on a pro-note which was found to be insufficiently stamped. The plaint was then amended and the plaintiff claimed to succeed on the note as an acknowledgment of the debt, but the court refused the plea. *Bishunath Singh v. Ishri Dayal* 1928 A.I.R. 408 (Oudh) : 5 O.W.N. 750 : 112 I.C. 247.

Where money is lent and the terms are set out in a promissory note the lender in order to succeed in a suit brought to recover the amount must prove the promissory note, and if such promissory note is inadmissible in evidence from want of proper stamp, then the suit must fail. *Parsottam Narain v. Taley Singh*, 26 All. 178 : 1903 A.W.N. 217 ; *Mulji Lala v. Lingu Makaji*, 21 Bom. 201.

A suit cannot be maintained as one to recover money lent based on the original consideration where the execution of the pro-note which is found to be insufficiently stamped, and the advance of the loan appeared to be contemporaneous. *Chinnappa Pillai v. M.R.C. Muthuram Chettiar*, 9 M.L.T. 281 ; 10 I.C. 669 ; See also *Alimani Sahiba v. Subbarayudu*, 63 M.L.J. 303 : 1932 M.W.N. 793 : 139 I.C. 486. See also *Chanda Singh v. The Amritsar Banking Co.* (1921) 2 Lah. 330 (334) : 66 I.C. 201 : 1922 A.I.R. 305 (Lah.)

S. 91 of the Evidence Act.—It is not open to a party who has lent

money on terms recorded in a promissory note, which turns out to be inadmissible in evidence for want of proper stamp duty, to recover his money by proving orally the terms of the contract, in the teeth of the provisions of s. 91 of the Evidence Act but such oral evidence may be adduced if there was already a completed contract. *Nazir Khan and another v. Ram Mohan Lal and others* 53 All. 114 F.B. : 1931 A.L.J. 64 : I.R. 1931 All. 627 : 133 I.C. 307 : 1931 A.I.R. 183 (Allahabad); *Muthu Sastrigal v. Viscanath Pandara*, 38 Mad. 660 : 26 M.L.J. 19 : 1914 M.W.N. 58 : 21 I.C. 864. See also *Alimannessa Shahiba v. Sabbarajpula* 139 I.C. 484 : 63 M.L.J. 303 : 1932 M.W.N. 793; *Chand Singh v. Anurisar Banking Co.*, 2 Lah. 330 (334) : 66 I.C. 201 : 1922 A.I.R. 307 (Lah.). (The High Courts of Calcutta, Patna and Rangoon have taken opposite views in 45 Cal. 538 : 21 C.W.N. 1043 : 7 Patna 845 : 9 Rangoon 56). A party can recover on oral evidence inspite of the provisions of s. 91 of the Evidence Act, if the pro-note is inadmissible for want of the first stamp. *Kumar Bahadur v. Suraj Baksh*. 139 I.C. 298 (Oudh) F. B.

• **Renewed bond.**—When the plaintiff gave up his rights under a mortgage in consideration of a cash payment of Rs. 1,000 and a hundi for Rs. 400 executed in his favour by the mortgagor and returned the mortgage bond with an endorsement on the back of the bond to the effect that the mortgage bond has been satisfied, but the hundi was not sufficiently stamped, *held* that as there is no cause of action independently of the hundi which is not admissible in evidence owing to insufficient stamp, the suit by the plaintiff must fail. *The Firm Bhagat Ram Ganpat Rai through Kala Ram and Girdhari Lal v. Chhajju Ram*, 15 P.W.R. 1918 : 44 Ind. Cas. 886.

When the defendants executed two hundis in favour of the plaintiff and afterwards renewed the hundis, being unable to pay money due, and the plaintiff then sued for money due but the hundis were found to be insufficiently stamped, *held* that the hundis being inadmissible the plaintiff can fall back on the prior hundis. *Jagan Prasad v. Indar Mal*, 36 All. 259 : 12 A.L.J. 361 : 23 I.C. 589; *Srinath Das v. Angud Singh*, 7 All L.J. 459 : 6 Ind. Cas. 126.

A hundi may be inadmissible in evidence, still a suit for the original consideration may lie, but where execution of the hundi is in consequence of inability to pay a prior hundi, the principle enunciated in *Parsottam v. Taley Singh*, 26 All. 178 : 1903 A.W.N. 217 applies and the plaintiff cannot fall back on the original consideration, *Nathu Ram v. Dogar Mal*, (1924) A.I.R. 144 (L.); *Bally Singh v. Bhagwan Das Kulwar*, 7 L.B.R. 1017 : 7 Bur. L.T. 95 : 23 Ind. Cas. 975.

When the promissory note is taken for an antecedent debt, the later promissory note only operates as a suspension of the ordinary remedy until it matures or is enforced. If the promissory note is unenforceable then the ordinary remedy on the original debt is revived and is enforceable provided it is not barred by limitation. *Anantanarayan Iyer v. Savithri Ammal*, 36 Mad. 151 (156) : 22 M.L.J. 231 : 1912 M.W.N. 59 : 13 I.C. 458; *Natarajulu Naicker v. Subramanian Chettiar*, 45 Mad. 778 : 43 M.L.J. 695 : 1922 M.W.N. 450 : 16 L.W. 705 : 69 I.C. 939 : 1922 A.I.R. 181 (Mad.).

* A promissory note executed in lieu of a previous promissory note just before limitation on the earlier promissory note expired, is based on good consideration and the plaintiff's forbearance to sue on the earlier promissory note is a good consideration, *Mahammad Jafar v. Ramcharan*, 26 O.C. 204 : 10 O.L.J. 43 : 74 I.C. 316 : 1923 A.I.R. 176 (Oudh).

Where a *hundi* is executed in consideration of a loan and later on a fresh *hundi* was executed and the old one returned to the executant, and a suit was brought on the later *hundi* and during the suit it was found that the later *hundi* was insufficiently stamped, held that the plaintiff cannot recover. *Gurdas Mal Singh v. Ishar Das & another*, 60 I.C. 107.

Effect of admission by debtor.—When a promissory note is inadmissible in evidence owing to insufficient stamp then an admission by the defendant will not make it admissible, but the suit can be decreed on the original contract. *Lokumal v. The Sind Bank, Ltd.*, 13 S.L.R. 169 : 57 Ind. Cas. 386. See also *Koda'i Mathaya v. Tanjoppala*, 8 M.L.T. 251 : 7 Ind. Cas. 320 ; *Thaji Bēebi v. A. V. Tirumalatappa*, 30 Mad. 386 : 17 M.L.J. 308 ; *Chenbasappa v. Lakshman Ram Chandra*, 18 Bom. 869 ; *Damodar v. Atmaram*, 12 Bom. 443 ; *Krishnaji v. Rajmal*, 24 Bom. 360 : 2 Bom. L.R. 25.

Under the stamp law of India an admission by defendant will not make an insufficiently stamped document admissible in evidence. *Ankur Chunder Roy Chowdry v. Madhab Chunder Ghosh*, 21 W.R. 1. Where money is lent, the lender is entitled to repayment although there is no express promise to pay, hence an admission by the defendant that he has not repaid the loan enables the plaintiff to recover the money lent in a case where the plaintiff has a cause of action independent of the contract, *Pramatha Nath v. Dearka Nath*, 23 Cal. 851. But see *Rahimtolla v. Murray*, 11 Ind. Cas. 810, where it was held, a suit based on an admitted document, cannot be dismissed because the instrument is insufficiently stamped. See also *Muttukaruppa v. Rama Pillai*, 5 Mad. H.C.R. 158 ; *Pestonji v. Palanji*, 1892 P.J. 299.

Proviso (b).—A court should not levy penalty of rupee 1 as well as duty of one anna under proviso (b) to s. 35 of the Stamp Act when the receipt is admitted, it is not necessary that the receipt should be endorsed by the Collector under s. 42. *Reference under s. 57 of Act II of 1809*, 24 All. 374 F.B. : (1902) 22 A.W.N. 72.

Proviso (c).—Correspondence by which lease was completed requires stamp. Revenue law could not be evaded by stamping a subsequent letter after the contract has been completed. *Boyd v. Krief*, 17 Cal. 548 ; *Bijay v. Howrah Amta Railway Co.*, 38 C.L.J. 177. See also *Bhauram Mulan Gopal v. Ramnarayan Gopal*, 12 Bom. H.C.R. 208.

The provisions of this sub-section overrule the case of *Rainier v. Gould*, 13 Mad. 255, in so far as it held that all the letters require stamp.

In a suit for a breach of promise of marriage the correspondences between the parties need not bear any stamp as a contract of marriage is of a different description and is not within the meaning of legislature to require a stamp, *Orford v. Cole*, 2 Stark. 351 : 171 E.R. 670.

Proviso (d)-Criminal proceedings.—The prohibition that documents not stamped or insufficiently stamped are not to be admitted in evidence or not to be acted on, does not apply to proceedings in criminal courts, *Jagannath v. Deokinandan*, 16 Cr. L.J. 543 : 29 Ind. Cas. 671. See also *Thaji Beebi v. Tirumalaipappa*, 30 Mad. 386 : 17 M.L.J. 308.

36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument where not to be questioned.

NOTES.

Compare proviso (3) to section 34 of Act I of 1879.

Application.—S. 36 is applicable to documents under the old Act of 1860 as well as to insufficiently stamped instruments under the new Act of 1899, *Niratan Miller v. Abdul Gafur Gazi and others*, 32 C.L.J. 75 : 59 Ind. Cas. 3. Proviso 3 to s. 34 (now s. 36) applies to all instruments chargeable with duty including those exempted under proviso 1 to that section, *Mangal Sain v. Gobind Das*, 139 P.R. 1890. S. 36 really lays down a rule preventing only the exclusion of what is already in evidence in the proceedings but if after termination of those proceedings other proceedings recommence, then the section has no application. Thus where *ex parte* proceedings were set aside and new proceedings began, s. 36 would have no application as subsequent proceedings would in substance be different though the suit is technically the same, *Solamalai Mudaliar v. Vadamalai Muthirani*, 23 M.L.J. : 12 M.L.T. 122 : 16 Ind. Cas. 296. S. 36 applies to instruments which may be admitted in evidence under the proviso to s. 35 and to instruments which a court holds as not liable to stamp duty, *Maung Ba Kywan v. Mr. Kye Kyee*, 2 L.B.R. 103.

Where an instrument unstamped or insufficiently stamped has been admitted in evidence by the trial Court as duly stamped or not requiring to be stamped or on payment of duty and penalty, such admission cannot be called in question by the same court at a later stage or by an Appellate Court on the ground that the instrument has not been duly stamped. All that the Appellate Court can do is to proceed under Section 61 or impound the instrument and send it to the Collector, who can levy duty and penalty.

'S. 36 is in its nature mandatory and applies to a Court of appeal or of revision independently of the fact as to the question of the ad-

missibility being raised in the lower Court or not; but the appellate or revisional Court is not bound to admit the document any further or for any other purpose than the lower Court has admitted it.' *Gopal Pandayachi v. Raja Gopal Naidu*, 1926 M.W.N. 757: 98 I.C. 75: 1926 A.I.R. 1148 (Mad.). See also *Deva Chand v. Hira Chand Kamaraj*, 13 Bom. 449.

Arbitration proceedings.—This section applies to documents admitted in evidence by arbitrators, *The Bombay Co. Ltd. v. The National Jute Mills Co.*, 39 Cal. 669: 16 Ind. Cas. 153; *Kali Charan Banik v. Moni Mohan Saha Banik*, 28 C.W.N. 871 (872): 82 I.C. 416: 1924 A.I.R. 794 (Cal.).

Admitted in evidence.—The expression "admitted in evidence" in s. 36 means the act of letting the documents in as part of the evidence as a result of judicial determination of the question whether it can be admitted in evidence or not, i.e., the court must have applied its mind to the question whether the document was admissible or not, *Sitaram v. Thakur Dass*, 50 Ind. Cas. 781. See also *Chunnilal Tulsiram v. Mulabai*, 12 Bom. L.R. 166: 6 Ind. Cas. 903. The reason why the word "admission" alone is used in s. 36 of the Stamp Act, is that though it is included in the words "acted upon" as to admit a document in evidence is to act upon it, it is a narrow term than "acting upon." *Mi Mi v. Sohan Singh*, 33 I.C. 595 (Upper Burma).

When there is no order passed admitting a document in evidence, the document cannot be said to have been admitted in evidence. *Guranditta v. Firm Gurdasmal Ramchand and others*, 1925 A.I.R. 552 (Lahore): 91 I.C. 772: 72 L.L.T. 343: 26 P.L.R. 634 F. B.

The proper construction of clause 3 of section 34 (now s. 36) is to be arrived at on a consideration of the terms of s. 50 (now s. 61), which is referred to in clause 3 of s. 34, and shows that an instrument is regarded, for the purposes of that section, and, therefore, presumably of clause 3 of section 34 also, as having been admitted in evidence when it has been admitted either (1) as duly stamped or (2) as not requiring a stamp, or (3) upon payment of duty and a penalty under s. 34 i.e., under clause (1) of that section (now s. 35). Section 50 (now s. 61) applies only to three classes of admissions, and those are the only admissions contemplated in clause (3) of s. 34 (now s. 36). *Deva Chand v. Hira Chand Kamaraj*, 13 Bom. 449.

Where the instrument is insufficiently stamped.—If an insufficiently stamped instrument is put on the record and the judge after examining the witness delivers judgment acting upon it, the instrument to be deemed as admitted in evidence and such admission cannot be questioned in appeal. It is nowhere laid down that a separate written order admitting the document is necessary. *Gurudas Mal Ram Chand v. Guranditta Mal*, 11 Lah. 77: 31 P.L.R. 360: 119 I.C. 485: 1929 A.I.R. 770 (Lah.). See also *Ranglal Kaluram v. Kedar Nath Kesriwal*, 27 C.W.N. 513: 77 I.C. 845; *Kali Charan Banik v. Moni Mohan Saha Banik*, 28 C.W.N. 871: 82 I.C. 416: 1924 A.I.R. 794 (Cal.).

Where the Stamp was not Cancelled.—If a pro-note is admitted in evidence and it is subsequently discovered that the stamp is not cancelled, then such admission cannot be called in question. *Kalimane Sahiba v. Subharayudu*, 63 M.L.J. 308 : 1932 M.W.N. 793 : 1932 A.I.R. (Mad.).

Admitted tentatively.—But where an objection was taken but the trial court held that it would decide the question after the whole case was gone into and made it an exhibit but held the instrument as inadmissible in evidence in the judgment, the lower appellate court on appeal reversed that finding, on the ground that having admitted in evidence the trial court was wrong in holding that the document was inadmissible, held by the High Court that the document should be excluded from evidence. The words "admitted in evidence" mean the act of admitting the document as part of the evidence, but the admission must be the result of judicial determination of the question whether or not it can be admitted in evidence without proper stamp, i.e., the court at the time of admitting it, should apply its mind to the question of its admissibility. *Channidal Talsiram v. Mulabai*, 12 Bom. L.R. 466. See also *Sunder Das v. The People's Bank of India, Ltd.*, 169 P.L.R. 1912 : 272 P.W.R. 1912 : *Alimance Sahiba v. Koli-seth Subharayudu*, 63 M. L. J. 303 : 36 L. W. 470 : 139 I. C. 486 : 1932 A. I. R. (M) 693.

Where the circumstances show that the sealing of the document with the exhibit seal and marking of it as an exhibit was not done in the course of the evidence and was not done as reception of the document as evidence in the case, the petitioners can raise the question of admissibility in appeal court and the document was rejected by the High court as inadmissible in evidence. Therefore in the case where the judge did not apply his mind to the fact that the instrument had been altered so that there is only one stamp where there should have been two stamps, the High Court can reject the instrument in appeal. *Munay Myo and others v. Ma Myin and others*, 1928 A.I.R. 263 (Rangoon) : 114 I.C. 289.

Where a judge does not apply his mind to the question of admissibility of an hundi but the usual endorsement of production and admission is done by a clerk with the judge's initials to the same affixed by rubber stamp, such an instrument can be rejected by the Judge at a subsequent stage of the suit as the action of the clerk can be taken to be admitting in evidence the hundi within the meaning of s. 36 of the Indian Stamp Act. *Vendanna v. Parsuram Byas*, 56 M.L.J. 633 : 29 L.W. 63 : 1929 A.J.R. 22 (Mad.).

Objection as to stamp.—See cases under s. 35 *supra*.

At any stage of the suit.—The words "at any stage of the suit" would include an appeal. *Shiddapa v. Irava*, 18 Bom. 373 ; *Sitaram v. Ram Prosad Ram*, 18 C.W.N. 697 : 19 C.L.J. 87 : 22 Ind. Cas. 858 ; *Biswanath Bhattacharjee v. Gobinda Chandra Dass*, 29 C.L.J. 305 : 23 C.W.N. 534 : 51 Ind. Cas. 88. The words would also include proceedings in filing an award after the document has been admitted and an award made by arbitrators, *The Bombay Co., Ltd. v. The National Jute Mills Co., Ltd.*, 39 Cal. 669 : 16 Ind. Cas. 153. But

where the proceedings recommenced after an *ex parte* decree has been set aside the instrument cannot be said to be admitted in evidence because it was admitted in evidence in the proceedings which are set aside. *Solamalai Mudaliar v. Vadamalia Muthiram*, 23 M.L.J. 273: 12 M.L.T. 122: 16 Ind. Cas. 96.

S. 35 of the Stamp Act excludes both the original instrument itself and secondary evidence of its contents in the case of an unstamped or insufficiently stamped document. Under s. 36 when either the original instrument itself or secondary evidence of its contents has in fact been admitted, the admission cannot be called in question in the same suit on the ground that the instrument was not duly stamped. *Maung Po Hloa v. Ma Ma Gyi*, I.L.R., 4 Rangoon, 363: 101 I.C. 198: 1927 A.I.R. 109 (Rangoon).

In appeal.—The question of admissibility of an insufficiently stamped instrument cannot form a ground of appeal. *Khoob Lal v. Jungle Singh*, 3 Cal. 787: 2 C.L.R. 439; *Devuchani v. Hirachani Komaraj*, 13 Bom, 449 F.B.; *M.R. Currie v. M.R. Chetty*, 11 W.R. 520. S. 36 bars an objection being raised in appeal that the document is not duly stamped. *Nagappa Chetty v. V. A. A. R. Firm*, 49 M.L.J. 306: 1925 M.W.N., 484: 91 I.C. 491: 1925 A.I.R. 1215 (Mad.). See *Surja Narain Mukhopadhyaya v. Pratap Narain Mukhopadhyaya*, 26 Cal. 955 (1959); *Mohun Lal v. Sri Gangaji Cotton Mills*, 4 C.W.N. 369 (386); *Joyman Bewa v. Easin Sardar*, 53 Cal. 515: 30 C.W.N. 609: 43 C.L.J. 493: 95 I.C. 483: 1926 A.I.R. 877 (Cal.).

S. 36 of the Indian Stamp Act, makes it reasonably clear that the instrument having once been admitted in evidence, is not to be called in question at any subsequent stage of the same suit. It matters nothing whether it was wrongly or rightly admitted or admitted without objection or after hearing or without hearing such objection. *Nirod Basini Mitra v. Sital Prosad Ghatak*, 51 C.L.J. 569: 128 I.C. 187: 1930 A.I.R. 577 (Cal.).

Admission by trial court: subsequent rejection by appeal court.—Where an unstamped instrument is accepted by the 1st Court in evidence, it should not be rejected by an appeal court at a subsequent stage of the suit. *Sitaram v. Ramprosad Ram*, 18 C.W.N. 697: 19 C.L.J. 87: 22 Ind. Cas. 958; *Monohar Lal v. Sheodyal Sing*, 1856 S.D.A. 62; *Mark Ridded Currie v. S. V. Mutu Ramen Chetty*, 3 B.L.R. 126 (130): 11 W.R. 520; *Srinath Saha v. Saroda Gobinda Chowdhury*, 5 B.L.R. App. 10; *Abinash Chandra Bose v. Nagendra Nath Dutt*, 53 C.L.J. (251) 256: 1931 A.I.R. 480 (Cal.): 134 I.C. 575.

When a document has once been admitted in evidence its admissibility in evidence on account of unsufficiency in stamp cannot be questioned in appeal. *Khoob Lal v. Jungle Singh*, 3 Cal. 787: 2 C.L.R. 439; *Enal Mondal v. Boloram De*, 3 C.W.N. 581; *Enayetoolah v. Sheikh Meajan*, 16 W.R. 6. A document which is not stamped or improperly stamped should not be admitted in evidence or acted upon unless it is duly stamped. Where, however, it is admitted in evidence in the lower Court, the admissibility cannot be challenged in appeal or in any subsequent proceeding incidental to his suit. *Joyman*

Bewa v. Easin Sardar, 53 Cal. 545: 30 C.W.N. 601: 43 C.L.J. 493: 95 I.C. 483: 1926 A.I.R. 877 (Cal.).

Where the trial court admitted instruments insufficiently stamped the High Court in appeal held that they cannot interfere. *Biswanath Bhattacharjee v. Govindo Chandra Dass*, 29 C.L.J. 305 (311): 23 C.W.N. 534: 51 Ind. Cas. 88; *Punchanand Das Chowdhury v. Taramoni Chowdhurani*, 12 Cal. 64; *Surja Narain Mukhopadhyay v. Protap Narain Mukhopadhyay*, 26 Cal. 955 (959). Where an unstamped *hundi* has been wrongly admitted in evidence that admission cannot be questioned in an appeal court, as s. 34 cl. 3 (now s. 36) is a bar. *Ramaswami Chetty v. Ramaswami Chetty*, 5 Mad. 220; *Laksminarayan v. Ramajogigaru*, 8 M.L.J. 66; *Sugappa v. Govindapa*, 12 M.L.J. 351; *Reference under Stamp Act*, 8 Mad. 564; *Chinmaya Ran v. Ramaya*, 4 Mad. 140; *Lakshmi Narayan v. Suppara Gounden*, 2 Mad. H.C.R. 321. See also *N.M.R. Nagappa Chetty v. V.A. A. R. Firm*, 91 I.C. 494: 1925 A.I.R. 1215 (Mad.): 49 M.L.J. 306: 1925 M.W.N. 484; *Gopala Podayachi v. Raja Gopal Naidu*, 1926 M.W.N. 757 (759): 98 I.C. 75: 1926 M.W.N. 1148 (Mad.): 1926 A.I.R. 1148 (Mad.); *Venkateshwarar Iyer v. Ramanatha Dheskskhitau*, 119 I.C. 472: 1929 A.I.R. 622 (Mad.); *Alagappa Chetty v. Narayan Chettiar*, 140 I.C. 315.

Once a document has been admitted in evidence in the trial court it cannot be called in question at a later stage of the same suit on the ground that the document is not duly stamped. *Balbin Raghu Dhutwade v. Bhikarbin Gure*, 73 Ind. Cas. 125: 1923 A.I.R. 412 (Bom.); *Shidapa v. Irava*, 18 Bom. 737; *Devachand v. Herachand Kamraj*, 13 Bom. 449; *Bala Raghu Dhanwade v. Bhiku Genu Jambhale*, 25 Bom. L.R. 450; *Joharmal v. Tejram Jagrup*, 17 Bom. 235 (240). Once an instrument has been admitted in evidence by a trial court even though insufficiently stamped, its admissibility cannot be questioned before a superior court. *Krishnaji v. Sukhdeo*, 73 Ind. Cas. 65: 1923 A.I.R. 284 (Nagpore). An admission of a document by the trial court however erroneous cannot under the provisions of s. 36 of the Indian Stamp Act be questioned in a court of appeal. *Malaram and another v. Musst. Prem Kuar*, 72 Ind. Cas. 42: (1923) A.I.R. (Lah.) 43; *Mohammed Ewas v. Brij Lal*, 4 I.A. 166 (175); *Ratan Singh v. Purbhu Dayal*, 1931 A.L.J. 230: 131 I.C. 135: 1931 A.I.R. 302 (All.); *Har Narain v. Bihari Lal*, 1932 A.I.R. (Lah.) 582.

Once a document has been admitted in evidence, such admission cannot be questioned again whether the document was admitted without objection or with objection except as provided under s. 61 of the Stamp Act. *Jagdish Singh v. Firangi Singh*, 6 Patna 765: 106 I.C. 653: 1928 A.I.R. 155 (Patna). The want of stamp in a document admitted in evidence where the error of receiving it unstamped did not affect the merits of the case, is not a ground for reversing the decision. *M. R. Currie and other v. M. R. Chetty*, 11 W.R. 520. But if a court admits and acts upon an instrument which cannot under any circumstances be acted upon or admitted, s. 36 does debar an appeal court from dealing with the illegality, *Maung Ba Kyewam v. M. Kye Kye*, 2 L.B.R. 103. But see *contra*, *Nga Pyan Na v.*

Maung Tha Zan, U.B.R. 1892-1896, Vol. II 633. The words of s. 36 are very wide and refer to any document which had in fact been admitted in evidence, consequently if an insufficiently stamped promissory note had been admitted in evidence on payment of penalty, the same cannot be rejected by the appeal court., *Ma Nyau v. Maung saw Mya*, 6 Rangoon 590: 114 I.C. 294: 1929 A.I.R. 9 (Ran.)

Where the trial court gave a decree based upon an unstamped instrument, held that the appellate court could not reverse the decree of the trial court on that ground alone but may impound the document and send it to the collector who can levy duty and penalty. *Mi Mi v. Sohan Singh*, 33 I.C. 595 (Upper Burma). An instrument which falls within the definition of a promissory note cannot under any circumstances be admitted in evidence if unstamped. A court which admits such a document on payment of duty and penalty acts contrary to the provisions of s. 35 of the Stamp Act; such an admission of the document by the trial Court does not debar the appeal court in afterwards rejecting the instrument as inadmissible. *N. S. Venkatrama Sujas v. Chella Pillai*, 50 M.L.J. 479 (480).

Instruments bearing a stamp of improper description.—The admission of an instrument of mortgage written on stamp of improper description into evidence by the trial court cannot be called in question in superior court. *Ma Pwa May v. S. R. M. M. A. Chettiar Firm*, 56 I.A. 379: 7 Ran. 624: 32 Bom. L.R. 117: 34 C.W.N. 6: 51 C.L.J. 6: 58 M.L.J. 56: 1929 M.W.N. 941: 30 L.W. 481: 6 O.W.N. 869: 1929 A.I.R. 379 (P.C.).

When the document was never produced in the trial court. Where on appeal an object was raised that the document in question was not sufficiently stamped and the District Judge had disposed of the point by holding that the document has already been admitted in evidence and s. 36 of the Indian Stamp Act is a bar to such an objection, the High Court said: "But the document was not admitted in evidence in the trial Court, it was never produced and has never been produced. Therefore the reception of the secondary evidence was in direct contravention of an imperative prohibition of the law and the fact that there was no objection cannot convert irrelevant evidence into relevant evidence. The principle of acquiescence can only be applied when the secondary evidence has been given of the contents of a document which, if produced, itself could have been admitted under the provisions of the law." *Jhanda Singh v. Harnam Singh*, 27 P. L. R. 260: 94 I.C. 75: 1926 A. I. R. 415 (Lah.). A court cannot admit in evidence an instrument not duly stamped upon levy of a penalty under s. 34 (now ss. 35 and 36), unless the instrument is actually produced before it, *Kallu v. Halki*, 18 All. 295 (298).

In the same court—Once a document is admittal in evidence and exhibited it is not open to that court to remove it from the record on account of subsequent discovery that the document is not stamped. *Dasi Chamar v. Ram Aular Singh*, 71 Ind. Cas. 475 (Patna). When the plaintiff sued for money due and produced his Khatas in proof

of his claim and the trial court admitted the Khatas in evidence but the successor in office of the Judge who admitted the Khatas rejected them as insufficiently stamped, the lower appellate court on appeal remanded the case for trial holding that the documents having been once admitted cannot be rejected again; *held*, by the High Court, in appeal, that the case was correctly remanded. *Derachand v. Hirachand Kamaraaj*, 13 Bom. 449. See also *Shaddapa v. Irava*, 18 Bom. 737. When an insufficiently stamped instrument has been admitted in evidence, it cannot be called in question in the same suit on the ground that the document is not duly stamped. *Bala v. Bhiku*, 25 Bom. L.R. 450; 73 I.C. 125; 1923 A.I.R. 412 (Bom.). See also *Maung Po Htoo v. Ma Ma Gyi*, 4 Rangoon 363; 101 I.C. 198; 1927 A.I.R. 109 (Rangoon). An unstamped document when once admitted in evidence by a judge on payment of duty and penalty, cannot be again called in question by his successor-in-office as being insufficiently stamped. *Babu Ram v. Lakhan Singh*, 24 A.L.J. 389; 93 I.C. 317.

But where the appeal court without exercising its powers under ss. 35 and 61 of the Stamp Act and sending the instrument, which has been admitted in evidence by the trial court to the Collector, recovers duty and penalty, *held*, that the action of the appeal court was *ultra vires*. *Rajendra Narayan v. Ghafor Khan*, 1924 A. I. R. 110 (Oudh); 73 I.C. 307; 27 O.C. 213.

Admitted by an appeal court.—Where the first court rejected an instrument as insufficiently stamped but on appeal the District Judge admitted it, *held* on appeal by the High Court, that such admission by the lower appellate court precludes the High Court from entertaining the question. *Ramaswami Chetty v. Ramswami Chetty*, 5 Mad. 220. In *Mahadeo Kaeri v. Sheoraj Ram Teli*, 41 All. 169 F.B.; 17 All. L.J. 19; 52 I.C. 947, the High Court thought that although the instrument was rejected by the 1st court, the District Judge on appeal having admitted the instrument, the High Court should not interfere.

Power of appellate court to admit instruments.—Where the duty and penalty were not tendered to the 1st Court, nor refused by it, an appellate court had no jurisdiction to direct reception of the document on a subsequent tender of the amount. *Gourpershad Sing v. Lalla Nuallal*, 7 W.R. 439; *Champabati v. Bibi Jiban*, 4 Cal. 213; *Ma Shwe Kyaw v. Ma Bok Gale*, 1 L.B.R. 81. Where there is no evidence that the stamp and penalty were tendered and refused in the District Court, the High Court in second appeal will not admit the instrument on payment of stamp duty and penalty. *Lakshman Das v. Rambhahu*, 20 Bom. 791. See also *Ramkrishna v. Vithu*, 1873 P.J. 108; 10 Bom. H.C.R. 441 A.C. Where a document is inadmissible in evidence owing to defective stamp the appellate court can receive the document on payment of the stamp duty plus penalty. *Ram Buran Singh v. Puja Sing*, 55 I.C. 923.

Letters Patent appeal.—Where a single Judge of a High Court admitted a document in payment of proper stamp and penalty, *held* that no question as to its admissibility can be raised in an appeal filed under the Letters Patent of the High Court as the Letters Patent

appeal is a subsequent stage of the suit within the meaning of s. 36 of the Stamp Act. *Raj Saran Minor & Co. v. Jati Parshad*, 73 Ind. Cas. 799 (Punjab).

Objection in Revision.—Where a Panchayat Court, under an erroneous view of law levies penalty on an insufficiently stamped instrument and admits it in evidence the document becomes a stamped document and the question cannot again be considered by the appellate or revisional court as section 36 is a bar. *Konakalla Rama Rao v. Nallari Pitchayya*, 104 I.C. 415 : 1927 M.W.N. 420 : 53 M.L.J. 131 : 39 M.L.T. 25 : 1927 A.I.R. 786 (Mad.). See also *Firm Attar Singh Sundar Singh v. Mool Chand*, 102 I.C. 884 : 1927 A.I.R. 876 (Lah.).

Challenge by separate suit.—Where the plaintiffs and defendants submitted their difference to arbitration by an unstamped document and the arbitrators made their award on the document ; the plaintiffs thereupon sued to set aside the award on the ground *inter alia* that the document containing the submission was not stamped, hence was invalid ; the High Court held that the arbitrators having made their award it is not open to any party to call in question such admission in the arbitration proceedings. Their Lordships said : “once an instrument is admitted in evidence in any proceeding either under s. 35 or under s. 36, it is available in that proceeding for all purposes as if it had been properly stamped at the outset. The proceedings will go to a valid termination and cannot afterwards be challenged as made without jurisdiction merely by reason of non-compliance with the Stamp Act.” S. 36 would be entirely nullified if on the conclusion of the proceedings in which the instrument is admitted, the proceedings could be set aside by a separate proceeding initiated by one of the parties on the sole ground that the person having authority to receive evidence had admitted or acted upon an unstamped or insufficiently stamped instrument. The legislature did not intend that admission of an instrument not duly stamped should go to the jurisdiction of the Judge or other person admitting it. *Ranglall Kaluram v. Kedar Nath Kesriwal*, 27 C.W.N. 513 : 77 I.C. 845 ; followed in *Kalicharan Banik v. Mani Mohon Shaha Banik*, 28 C.W.N. 871 : 82 I.C. 416 : 1924 A.I.R. 794 (Cal.).

Power of appeal court to revise the decision of the lower court.—(a) *On payment of duty and penalty.* When an instrument not stamped has been admitted in evidence by the first court on payment of duty and penalty such admission shall not be revised by an appeal court with regard to such reception in evidence. *Punchamund Dass Chowdhury v. Taramoni Chowdhurain*, 12 Cal. 64.

Where an unstamped promissory note was treated by the trial court as an agreement and duty and penalty realized on that basis, held that the erroneous decision by the trial court as to the amount of stamp payable does not debar the appeal court under s. 36 of the Stamp Act from correcting the error, *N. S. Venkatrama Aiyar v. Chella Pillai*, 40 M.L.J. 479 : 62 I.C. 607.

An appellate court has no authority to direct reception in evidence of an unstamped document to which the provisions of s. 20 of the Stamp Act XVIII of 1869 (now s. 35) are applicable unless the

amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected, *Champabaty v. Biby Jibun and another*, 4 Cal. 213; *Monmohinee Dasse v. Bishenmoyee Dasse*, 7 W.R. 112; *Sheikh Rahomatulla v. Sariutulla Bagchi*, 10 W.R. 51 (63) F.B. : 1 B.L.R. 58 (79) F.B.

The appellate court cannot order the reception of the document on a subsequent tender of the amount, *Gourpershad Singh v. Lalla Nundlal*, 7 W.R. 439.

(b) *Other cases.*—Where an instrument not duly stamped has been admitted in evidence by the first court, the appellate court should regard it as admissible in evidence and such admission shall not be called in question at any subsequent stage of the suit. *Syed Bastruddin Ahmed v. Kalika Prosad Singh*, 7 Indian Cases 582; see also *Humayun v. Wajib Ali*, 11 O.C. 152; *Diwan Lachman Dass v. Dholan Dass*, 2 P.R. 1891; *Mongal Sain v. Gobind Das*, 139 P.R. 1890; *Piran Ditta v. Mangal Singh*, 108 P. R. 1908 : 207 P. W. R. 1908.

• **Procedure in appeal court in case of erroneous admission by trial court.**—When the first court has admitted in evidence an unstamped document, an appeal court cannot review that decision, in so far as it concerned the admission in evidence of that instrument, but is to proceed under s. 50 (now s. 61) of Act I of 1879, *Punchannun Dass Choudhary v. Taramoni Choudhrai*, 12 Cal. 64; *Rang Lal Kalooram v. Kedar Nath Kesriwal*, 27 C.W.N. 513 : 77 I.C. 845.

If the appeal court considers an instrument to have been erroneously admitted because it is insufficiently stamped, the proper procedure is to proceed under s. 50 (now s. 61) of the Act I of 1879, *Gurpada Bin Trapa v. Naro Vilhal Kulkarni*, 13 Bom. 493; see also *Devachand v. Hirachand Kamarej*, 13 Bom. 449. Where an insufficiently stamped instrument has been received in evidence, it can only be questioned by the appeal court in a proceeding under s. 50 (now s. 61) of the Act I of 1876, *Reference under Stamp Act s. 46*, 8 Mad. 564 F.B.; *Chinnaya v. Ramaya*, 4 Mad. 137 (140); *Kondapi Seshayya v. Grandhi Venkata*, 31 M.L.J. 234. See also *Nagappa Chetty v. V. A. A. R. Firm*, 91 I.C. 494 : 1925 M.W.N. 484 : 49 M.L.J. 306 : 1925 A.I.R. 1215 (Madras).

Where a document has been admitted in evidence, such admission cannot be questioned again except by a proceeding under s. 61 of the Stamp Act. *Jagdeep Singh v. Firanghi Singh*, 6 Patna 765 : 106 I.C. 653 : 1928 A.I.R. 155 (Patna).

Where s. 61 does not apply, the court is to proceed under s. 33 of the Indian Stamp Act. *Baiju v. Jowahir*, 195 P.R. 1883 F.B.; *Diwan Lachman Das v. Dholan Das*, 2 P.R. 1891 F.B. The appeal court cannot reverse the decree of the trial court on ground of the decree of that court being based on an insufficiently stamped deed, but may impound the deed under s. 33 of the Stamp Act and send it to the Collector, who can levy duty and penalty, *Mi Mi v. Sohan Singh*, 33 I.C. 595 (Upper Burma).

Copies.—Where a copy of a *solenama* which was destroyed, was filed and admitted in evidence by the trial court, no questions as to the admissibility could be raised in the appeal court; in the absence of evidence to the contrary the court in which the *solenama* was filed must be presumed to have acted properly and satisfied that the document was properly stamped, *Abid Hussain v. Ashar Hussain*, 11 All. L.J. 506 : 19 Ind. Cas. 445, confirmed on appeal by P. C. in *Ahmad Raza v. Sayul Abid Hussain*, 43 I.A. 264 : 38 All. 494 : 14 All. L.J. 1099 : 18 Bom. L.R. 904 : 24 C.L.J. 504 : 21 C.W.N. 265 : 5 L.W. 153 : (1916); M.W.N. 543 : 1 P.L.W. 90 : 39 I.C. 11. See also *Wilaiti v. Pir Bulash*, 1884 All. W.N. 318; *Hardeodas v. Parbati*, 1887 All. W.N. 94.

Objection.—S. 36 of the Stamp Act prevents objections as to the insufficiency of stamp to be taken at a late stage of the suit when document was admitted and acted upon by arbitrators and that admission of documents cannot be called in question except under s. 61 of that Act. *The Bombay Co., Ltd. v. The National Jute Mills Co. Ltd.*, 39 Cal. 669 : 15 Ind. Cas. 155. See also *Guraulitta Mal v. Firm Gurudasmal Ramchand.* 91 I.C. 772 : 1925 A.I.R. 552 (Lahore) : 26 P.L.R. 634 : 7 L.L.J. 343.

37. The Governor General in Council may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

NOTES.

This section is new. This is a remedial section. If an instrument bears a stamp of the proper amount but of improper description *i.e.* one not in conformity with the rules, then the Collector may, under Rule 18, if satisfied that the stamp of the improper description has been used solely because of the failure in procuring a stamp of the proper amount and description, remit the further payment of duty, if the application to that propose is filed within 3 months. (vide rule 18).

Certificate as to proper stamp.—An endorsement on a pro-note by a sub-Collector that penalty has been paid is not a certificate within the meaning of s. 37 that the pro-note is duly stamped, *Kamakshi Ammal v. Subbaraya Chetty*, 52 I.C. 758 (Mad.); (*Venkataman Ganap Hedge v. Shankarnarayan Sitaram Bhat*, 19 Bom. L.R. 862 : 42 Ind. Cas. 947, and *Reference under Stamp Act (II of 1899) s. 57*, 23 All. 213 : (1901) 21 All. W.N. 57 doubted).

What is a stamp of improper description.—The words “stamp of an improper description” in s. 37 of the Stamp Act, 1899, as well

as the Rules under the Act, do not include a description of stamp appropriate to the purpose outside the Stamp Act altogether, but must be confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on the instrument, but which is improper in the particular case having regard to the Act and the Rules. *Reference under s. 57 of Act II of 1899*, 23 All. 213 : (1901) 21 All. W.N. 54 dissented from in *Ma Pwa May v. S. R. M. M. A. Chelliar Firm*, 56 I. A. 379 : 7 Ran. 624 : 34 C.W.N. 6 : 58 M.L.J. 56 : 1929 M.W.N. 941 : 30 L.W. 41 : 6 O. W.N. 869 : 1929 A.I.R. 279 (P.C.) : 32 Bom. L.R. 117 : 51 C.L.J. 6 where it was held that a too narrow construction should not be put upon s. 37 which is a remedial section. A revenue stamp surcharged with the words 'Court Fees' is a stamp of improper description, within the meaning of this section.

S. 37 of the Indian Stamp Act and also s. 16 of the rules of Governor General in Council do not include within the words 'a stamp of an improper description' a description of stamp appropriate to purposes altogether outside the Indian Stamp Act, but applies to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular case having regard to the Act and the Rules. Therefore, use of four quater anna stamps to make up one anna instead of an one anna stamp is a stamp of improper description. *Venkatraman Ganap Hedge v. Shankarnarayan Sitaram Bhat*, 19 Bom. L.R. 862 : 42 Ind. Cas. 947. See also *Kamakshi Ammal v. Sabbaraya Chetty*, 52 Ind. Cas. 758, where the above cases were doubted. Where the necessary stamp was paid in postage stamp the Nagpur Court, *held*,—When the duty payable on an instrument is one anna, and one anna has been paid to the Government by the purchase of a Government stamp of that amount but not of the description, which under the Act and Rules, should be used for the instrument in question, then, in our opinion, the instrument bears a stamp of sufficient amount but not "improper description" and should not be classed as unstamped though the stamp used, instead of being of a wrong description of the revenue stamp, happens to be a stamp of some other department of the same Government whether judicial, postal, forest or telegraph. *Tukarm v. Sonaji*, 7 N.L.R. 26 : 10 Ind. Cas. 702. When a document is stamped with a stamp of the wrong kind the document is not to be considered as unstamped, but is to be treated as insufficiently stamped. When a document which ought to bear duty of Rs. 2-8, bore only an one anna stamp, the deficiency is Rs. 2-7 and penalty payable is ten times the deficit. *The Collector of Rangoon v. Abdul Rahaman Sircar*, 11 L.B.R. 316 : 67 Ind. Cas. 640.

In *Shaikh Rafizuddin v. Latif Ahmed*, 14 C.W.N. 1601 : 12 C.L.J. 324 : 7 Ind. Cas. 94, where the final decree in a partition suit was drawn up on a court fee stamp instead of a non-judicial stamp, the Calcutta High Court allowed non-judicial stamp to be put in and validated the decree while holding that sec 37 is of no assistance to the appellant, but refused to refund the amount of the Court-fee stamp.

Certificate by the Collector.—The Collector is entitled in cases of use of stamps of improper description, to exercise the powers

given him by s. 37 and any instrument so certified shall be deemed to have been duly stamped as from the date of its execution. *Ma Pwa May v. S. R. M. M. A. Chettyar Firm*, 56 I.A. 379 : 7 Ran. 624 : 32 Bom. L.R. 117 : 34 C.W.N. 6 : 51 C.L.J. 6 : 30 L.W. 41 : 58 M.L.J. 56 : 1929 M.W.N. 941 : 6 O.W.N. 869 : 1929 A.I.R. 279 (P.C.) : 120 I.C. 645.

Postage Stamp.—A promissory note stamped with quarter anna postage stamps can be validated by the Collector under rule 18 of the Govt. of India stamp Act rules, *J.J. Martis v. Outhbert D'Souza*, 55 Mad. 627 : 62 M.L.J. 538 : 1932 M.W.N. 121 : 137 I.C. 26 : 1932 A.I.R. 330 (Mad.). F. B.

38. (1) When the person impounding an instrument Instruments impound- under section 33 has by law or con- ed how dealt with. sent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

NOTES.

Compare S. 35 of Act I of 1879 ; ss. 21, 22, 23 of Act XVIII of 1869 and s. 17 (2) of Act X of 1862.

Under this section a person who impounds a document under s. 33 has power by law or consent to receive evidence, and admit the document in evidence on payment of duty and penalty, shall send an authenticated copy to the Collector ; other persons shall send the original to the Collector.

Procedure.—Under s. 35 (now s. 38) of Act I of 1879, the officer admitting the instrument in evidence shall send an authenticated copy of the instrument to the Collector, *Kallu v. Halki*, 18 All. 295 : (1896) All. W.N. 695. "In the case of an instrument admitted in evidence by court upon payment of duty and penalty under s. 35 as adjudged by such court, the court is required by s. 38 (1) to send to the Collector an authenticated copy of such instrument together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and remit such amount to the Collector. *Reference under Stamp Act*, s. 57, 25 Mad. 752 (757). When an insufficiently stamped document is filed in any Court, that court is bound to impound it. The wording of s. 33 of the Stamp Act leaves no option in the matter. After im-

pounding the Court is to proceed under s. 38 of the Stamp Act and is to send to the Collector an authenticated copy of it together with a certificate in writing stating the amount of duty and penalty levied in respect thereof. The decision then finally rests with the Collector to determine whether the instrument is rally insufficiently stamped or not; he has also the power of remitting the penalty levied. The duty cannot be discharged by an appellate court. *Peary Lall v. Sukhan Ram and another*, 1926 A.I.R. 478 (All.) : 93 I.C. 960.

Scope.—Ss. 38 and 40 do not contain the provision in s. 37 that the document when certified shall be deemed to have been duly stamped as from the date of execution. *Ma Pura May v. S. R. M. M. A. Chettyar Firm*, 56 I.A. 379 : 30 L.W. 41 : 7 Ran. 624 : 34 C.W.N. 6 : 32 Bom. L.R. 117 : 51 C.L.J. 6 : 58 M.L.J. 56 : 1929 M.W.N. 941 : 6 O.W.N. 869 : 1929 A.I.R. 279.

Courts to admit documents.—When an instrument not within the excepted instruments under sub-section (a) of s. 35 of the Stamp Act is tendered in court, the court is to accept it on payment of duty and the person tendering it can compel the court to accept it on payment of duty and penalty. *Nathu v. Hansraj*, 9 Bom. L.R. 122.

Return of document—When a document has been impounded and forwarded to the Collector, the Collector should return the same to the impounding officer under s. 40 (2) of the Stamp Act. *King Emperor v. Balu Kuppayyan*, 25 Mad. 525 (528).

39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, *** refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

NOTES.

See s. 36 of Act I of 1879 and s. 24 (b) of Act XVIII of 1869.

The sub-sec. (1) refers to refund of penalty exceeding Rs. 5.

Amendments.—The words “upon application made to him in this behalf or, if no application is made, with the consent of the Chief Controlling Revenue Authority,” following the word “fit” were omitted by Act IV of 1914.

Refunds.—“Section 39 (1) provides that in the case of a penalty in excess of Rs. 5 which had been levied by a court under s. 38, the

Collector may on application by the party concerned, refund the amount of penalty in excess of Rs. 5 though the excess was lawfully levied." "Sub-section (2) contains a similar provision for refunding the whole penalty in certain cases." *Reference under Stamp Act, s. 57, 25 Mad. 751 (759).*

By which law to be governed.—The procedure to obtain a refund is to be governed by the Act in force at the time the claim for refund was made. *Reference under Stamp Act, 5 Mad. 394.*

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of [*two annas in Bombay*] one anna or half an anna [*or a mortgage of crop (article 34 (a) of schedule 1-4) chargeable under clauses (aa) or (bb) of section 3 with a duty of two annas—in Madras*] only or a bill or exchange or promissory note, he shall adopt the following procedure:—

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit [an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

NOTES.

See s. 37 of Act I of 1879; s. 24 (a) and s. 28 of Act XVIII of 1869.

Amendments.—The words “half an anna” in sub-sec. (1) were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906). The words “an amount not exceeding” in cl. (b) of sub-sec. (1) were inserted by s. 6 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904). This section has been amended by Act XIII of 1924 (*infra*) whereby the provision or restriction specified in this section shall not apply to promissory notes executed after 30th September 1923 and before 1st day of April, 1924 (subsequently extended to 5th January, 1925).

Construction—S. 37 (1) (b) (now s. 40) of the Stamp Act I of 1879 determines the penalty leviable in all cases, *Reference under Stamp Act, s. 46*, 5 Mad. 394.

S. 40 clause 1 (b) is silent as to the person from whom the payment of the proper duty and penalty is to be required. The plaintiffs who wished the documents admitted in evidence in support of their claim, are the persons from whom the Collector, in the first instance can recover duty and penalty required before the documents can be admitted in evidence. If the Collector required it from a wrong person his procedure is open to review under chapter VI, and the remedy of that person lies in a suit against the person from whom it ought to have been required. *Secretary of State for India in Council v. Basharatullah*, 30 All. 271 : 5 All. L.J. 262 : (1908) 28 All. W.N. 130.

S. 37 (b) (now s. 40) applies to documents not duly stamped but if the stamp is correct according to the valuation set forth in the deed, then the Collector has no duties to perform under that section. *Queen Empress v. Venkatrayadu*, 12 Mad. 231.

The procedure laid upon in s. 37 (now s. 40) of Act I of 1879 must be strictly followed. The language of s. 37 (now s. 40) is imperative. If the Collector was of opinion that the instrument was chargeable with duty and was not duly stamped, his course was to require the payment of the proper duty, or the amount required to make up the same together with a penalty. But payment of such duty and penalty would not bar a prosecution under s. 40 (now s. 43) of any person who appeared to have committed an offence against the stamp law.

The Collector is to call upon the party to pay the penalty prescribed, *Empress v. Soddanund Mahanty*, 8 Cal. 259 (261) : 10 C.L.R. 365.

Before any prosecution is started the Magistrate is bound to consider whether the person had any intention to defraud by evading payment of stamp duty. *Empress v. Dwarkanath Chaudhury*, 2 Cal. 399. Every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under s. 69 (s. 70) of Act I of 1879, *Empress v. Janki*, 7 Bom. 821.

Instruments to be returned.—When instruments have been impounded by the Sub-Registrar, he was bound, when under s. 40 (3) they are returned to him by the Collector, to register the same and return them to the person or nominee of the person who presented them for registration. *Reference under Stamp Act*, s. 57, 25 Mad. 752 (757). See also *King-Emperor v. Balu Kuppayan*, 25 Mad. 525 (528).

Certificate when to be granted.—When the Collector proceeds under s. 40 (1) (b), he first makes a requisition for payment of the duty together with the corresponding penalty and it is only after such payment that he certifies by endorsement under s. 42—*Per Bhashyam Ayyangar J in Reference under Stamp Act*, s. 57, 25 Mad. 752 (760).

Certificate after disposal of suit.—The defendants executed a sarkhat in favour of the plaintiffs who sued on it. The first court found that the instrument was not stamped and was inadmissible; the lower appellate court dismissed the suit solely on the ground that the instrument was not stamped. The plaintiffs, thereafter moved the Collector and obtained a certificate that the instrument is properly stamped, *held* by the High Court, that the certificate by the Collector is binding on the High Court, therefore the decision of the lower court must be reversed and the case remanded for trial on the merits. *Agar Chand v. Balak Rari*, (1887) 7 All. W.N. 21.

Effect of Collector's certificate.—A Subordinate Judge impounded a document filed by the plaintiff and on which the suit depended, holding that the document is not sufficiently stamped and sent it to Collector. The Collector certified that the proper amount of duty and penalty have been realized, but before the receipt of information from Collector the Subordinate Judge dismissed the suit; *held* that the document then became admissible in evidence, and the court should have taken it into consideration, *Undu Bibi v. Tikari Ram*, 4 All. L.J. 205 : (1907) 27 All. W.N. 38. See also *In the matter of Khub Chand*, 40 All. 128 : 16 A.L.J. 49 : (1918) 47 I.C. 299, where it was held that the certificate by the Collector as to sufficiency of stamp is conclusive.

Certificate final.—A certificate made by the Collector under s. 40 (1) (a) can not be revised by the Board of Revenue or any other authority and that it would not be possible to give effect to the decisions of this court if a judgment were given that the certificate is erroneous. *Per Bhashyam Ayyangar J. in Reference under Stamp Act*, s. 57, 25 Mad. 752 (756); *Musst. Jai Devi v. Gokul Chand*, 131 P.L.R. 1906. See also *Stamp Reference by the Board of Revenue (In the matter of Khub Chand)* 40 All. 128 F.B. : 16 All. L.J. 49 : 47 Ind. Cas. 299.

Certificate when final.—In the case of an instrument impounded under s. 33, when it is produced in his office or received by him from another officer under s. 38 (2), the Collector may act either under clause (a) or clause (b) as the case may be, of s. 40 (1). If he acts under clause (a) he certifies under that very clause and such certificate is declared to be conclusive by sub-section (2). If he acts under clause (b) and levies duty and penalty, he certifies under s. 42 the very section under which Courts too, acting under s. 35, certify by endorsement, and s. 42 (2) declares that every instrument so endorsed shall be deemed to have been duly stamped.—*Per Bhashyam Ayyangar J.* in *Reference under Stamp Act*, s. 57, 25 Mad. 752 (758). If a Collector determines the duty under s. 31 on a document after its execution, but does not impound it, then the Board of Revenue cannot intervene, but if the Collector initiates a case under s. 40, then the Board of Revenue will be able to intervene, *In re Cook and Kelsey*, 59 Cal. 1171 : 140 I.C. 57 : 1932 A.I.R. 736 (Cal.).

S. 40 (2) Conclusive evidence.—The conclusive presumption laid down in s. 40 (2) of the Stamp Act in respect of an instrument endorsed by the Collector as sufficiently stamped, cannot apply to an instrument where the certificate is without jurisdiction. *Chotey Lal v. Girraj Kishore and another*, 48 All. 332 : 93 I.C. 63 : 1926 A.I.R. 359 (Allahabad).

Decision by Collector.—The decision of the Collector under s. 37 (a) [now s. 40 cl. 1 (a)] is conclusive, but the decision under s. 37 (b) of Act I of 1879 is not final nor conclusive. If the decision is complied with then the instrument becomes admissible under s. 39 of Act I of 1879 (s. 42 of Act II of 1899) but if the duty is not paid, then the civil court is to examine the document under s. 33 of Act I of 1879 and proceed to determine whether the instrument is properly stamped or not. If it finds that the instrument is not properly stamped then it is to proceed in accordance with ss. 33, 34, 35, (ss. 33, 35, 38) of Act I of 1879 ; but its decision is subject to revision by a higher court under s. 50 (now s. 61) of Act I of 1879 ; *Haribai v. Krishnarav*, 22 Bom. 632 : 1897 P.J. 12.

Where the Collector decided that the deed in question is not sufficiently stamped, and thereupon the deficit stamp duty and penalty were paid, and the Collector then certified by endorsement that the deed is now duly stamped, under s. 40 (2) this certificate is for the purposes of the Indian Stamp Act conclusive evidence of the matter stated therein. The effect is that there is no room for further disposal under s. 59 (2) of the stamp Act. *In the matter of Khab Chand* (1918) 40 All. 128 F. B. : 47 I.C. 299 : 16 A.L.J. 49.

Proviso.—When a release was endorsed on a deed of conveyance and the conveyance bore a stamp of one rupee under the Act but the endorsement was not stamped, the release is not exempted under the proviso as it contravenes s. 13 (now s. 14) and s. 5 (now s. 3) of the Act. *Reference under Stamp Act*, s. 46, 11 Mad. 40 F.B.

S. 40, clause (3).—The words “when he has dealt with it as provided by this section” create difficulty. S. 40, clause (1) lays down the procedure where the instrument is chargeable with duty in excess of one

anna or half anna ; or is not a bill of exchange or a promissory note ; in such cases if the Collector be of opinion that the instrument is not chargeable with duty, he will certify by endorsement thereon that it is duly stamped. If the Collector is of opinion that the instrument is chargeable with duty but is not duly stamped, he will require the payment of proper duty together with penalty specified in sub-clause (b) ; and in cases of documents impounded because written in contravention of section 13 or section 14, the collector may remit the penalty prescribed by clause (1) of s. 40. The words "when he has dealt with it as provided by this section" therefore can only mean that the collector is to follow the same procedure in case of all documents sent to him under s. 38 (2) of the Indian Stamp Act.

Under s. 38 (2) the person impounding a promissory note, a bill of exchange, or any instrument chargeable with duty of one anna or half an anna, shall send it in original to the Collector as obviously clause (1) of s. 38 would not apply to such cases. If the collector is to act under clause (3) he should follow the procedure laid down in clause (1) of section 40 i.e., he will not levy the penalty and duty, as under cl. (1) of s. 40, such instruments are excluded. The words "when he has dealt with it as provided by this section" cannot have any other meaning, because in interpreting a section the plain meaning of the words used are to be taken. It cannot mean criminal proceedings as that is barred by the words "as provided by this section."

The amendment of this section by Act XIII of 1924 makes the procedure in clause (1) inapplicable to promissory notes.

Under the Acts of 1879 and 1869 the Collector was not authorized to levy duty and penalty on such instruments and the remedy was by a criminal prosecution. The remedy is also available under the present Act. Under s. 26 of Act XVIII of 1869 a banker was empowered to pay the requisite stamp on a bill of exchange etc., and recover the same from the person who should have paid it. This is also the procedure under s. 47 of this Act.

Sub-section (3) (of s. 40) then provides that the Collector shall after certifying by endorsement that an instrument sent to him under s. 38 (2) is not chargeable with stamp duty, return it to the impounding officer and, under sub-section (2) of Section 42, the impounding officer has to deliver it to the person from whose possession it came into his hands. *Reference under Stamp Act, s. 57, 25 Mad. 752 at page 756.*

41. If any instrument chargeable with duty and not duly stamped, not being an instru-

Instruments unduly stamped by accident.

ment chargeable with a duty of [two annas—in Bombay] one anna or half an anna [or the mortgage of a crop (article 34 (a) of Schedule 1-A) chargeable under clauses (aa) or (bb) of section 3 with a duty of two annas—in Madras] only or a bill of exchange or promissory note,

is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

NOTES.

See s. 38 of Act I of 1879 and s. 24 (b) of Act XVIII of 1869.

• **Amendments.**—The words “or half an anna” after the words “one anna” were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906). This section has been further amended by Act XIII of 1921. See *infra*.

This section provides for cases where the defect in stamp duty is due to accident, mistake or urgent necessity and in such cases the Collector is to proceed under s. 42 only, and not under either s. 33 or s. 40.

The purchaser at an auction sale to whom an insufficiently stamped certificate of sale, has been issued can apply to the Collector to rectify the mistake, *Collector of Ahmedabad v. Rambhau*, 32 Bom. L.R. 1084; 128 I.C. 31; 1930 A.I.R. 393 (Bom.).

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under ss. 35, 40 or 41.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this

behalf to the person from whose possession it came into the hands of the officer impounding it or as such person may direct :

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding or if the Collector has certified that its further detention is necessary and has not cancelled such certificate ;

(b) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

NOTES.

See s. 39 of Act I of 1879 and s. 25 of Act XVIII of 1869.

Code of Civil Procedure, s. 144, cl. 3 corresponds to Order XIII, Rule 9 of the present Code (Act V of 1908).

As to the effect of endorsements on instruments brought into the Provinces where a higher duty is leviable, see sec. 48-A.

Application.—This section applies only to those cases where duty and penalty are leviable.

Penalty and duty are not leviable on copies.—No duty and penalty are leviable in respect of a document of which the original cannot be produced as s. 39 (now s. 42) presupposes that the original document is forthcoming. *Rangarau v. Bharayamm*, 17 Mad. 473 : 4 M.L.J. 192 ; *Kapason v. Shamu*, 7 Mad. 440 ; but see *Haran Ch. Bhoori v. Rashik Chandra Neogi*, 20 W. R. 63.

Where the Collector is to certify.—The Collector shall certify on the instrument on which the duty and penalty have been levied that proper duty and penalty have been levied, *Kalu v. Halki*, 18 All. 295 : (1896) All. W.N. 68. (This means that the endorsement can be made only on the original). See also *Arunachallum Chetty v. Olagappa Chetty*, 4 Mad. H.C.R. 212 ; *Raja of Bobbili v. Inuaganti*, 26 I.A. 262 : 23 Mad. 49 ; *Kapason v. Shamu*, 7 Mad. 440 ; *Ranga Rau v. Bharayamm*, 17 Mad. 473 : 4 M.L.J. 192. But a receipt for which penalty is paid need not be endorsed. *Reference under s. 57 of Act II of 1899*, 24 All. 374 : (1902) 22 A.W.N. 72.

Where Collector cannot certify.—When a release was endorsed on a deed of conveyance for Rs. 100, the Collector cannot certify the release on payment of deficit stamp duty and penalty as the deeds are in contravention of s. 13 (now s. 14) and s. 5 (now s. 3) of Act I of 1879. *Reference under Stamp Act s. 40*, 11 Mad. 40 F.B.

After certificate the instrument is admissible.—When a suit based on a sale deed, was dismissed as the sale deed was not properly stamped, the Collector was thereupon moved and received the duty and penalty leviable under the Act, and certified that the instrument has been duly stamped, *held* that the effect of the certificate is to render the instrument admissible in evidence. *Umda Biki v. Tikaram*, 4 All. L.J. 205 : (1907) 26 All. W.N. 38 ; *Tukaram v. Sonaji*, 7 N.L.R. 26 : 10 Ind. Cas. 702. An irregularity in making an endorsement on a promissory note by Collector will not prevent the admission of the document in evidence. *Girdhare Das v. Jagannath*, 3 All. 115 (117).

Effect of certificate by Collector—Final.—If the Collector validates and certifies under s. 42, an instrument which is really a deed of gift but stamped as an instrument of adoption, such a decision is final and binding and cannot be set aside by a Civil Court, *Ajodhya Prasad v. Parashram*, 119 I.C. 680 : 1929 A.I.R. 272 (Nag.).

The validity of certificate by court.—The validity of a certificate by a court is in no way affected by the declaration of the appellate court under sec. 61 (2) of the Stamp Act, that a higher duty and penalty is leviable. *Reference under Stamp Act*, s. 57, 25 Mad. 752 (758).

Effect of certificate by court.—It is only the certificate of the court under s. 42 that is subject to the operation of s. 61, and if it was intended that the certificate of the Collector, whether made under s. 40 (1) (a) or s. 42 (1), should be subject to the revision by the Board of Revenue, surely provision similar to those contained in s. 61 and proviso (a) to s. 42 (2), would have been effected for giving effect to such revision of the Collector's orders by the Board of Revenue. *Reference under Stamp Act*, s. 57, 25 Mad. 752 (758).

Sub-section (2), Proviso.—The proviso to s. 42 (2) of the Stamp Act as to the detention of a document, does not apply when the question was dealt with by the Collector under s. 40 and by a court under sec. 35. "Under proviso to s. 42 (2), the court is enjoined not to deliver the instrument to the party before the expiration of one month from the date of impounding it and it is competent to the Collector to direct its further detention, in order that he may take action under s. 61 if, in his opinion, the proper stamp duty and penalty have not been levied by the court, by bringing the same to the notice of the court to which the court admitting the instrument is subordinate." If the document is not in the custody of the court—under proviso (a) to s. 42 (2)—the appellate court is empowered to require the person in whose possession or power it is, to produce it. *Reference under Stamp Act*, s. 57, 25 Mad. 752.

43. The taking of proceedings or the payment of a

penalty under this Chapter in
 Prosecution for offence
 against Stamp-law. respect of any instrument shall
 not bar the prosecution of any
 person who appears to have committed an offence
 against the Stamp-law in respect of such instrument :

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

NOTES.

See s. 40 of Act I of 1879 and s. 24 (a) of Act XVIII of 1869. This section requires that the evasion should be intentional.

Application.—Where the instrument was properly stamped according to the valuation set forth in the instrument, but the question was whether the accused undervalued the instrument with the intention of defrauding the Government, the court need not record a proceeding under s. 40 (now s. 43) of Act I of 1879, whether there was an intention to defraud the Government *as that section only refers to cases in which a prosecution is started after the penalty is paid.* “It confines the power of instituting prosecution to the Collector, and instructs him to exercise it only, when it appears to him that the offence was committed with the intent to evade payment of stamp duty.” *Queen Empress v. Venkatrayadu*, 12 Mad. 231 (233). See contra, *Queen Empress v. Palani*, 7 Mad 537 (538), where it is held that the Collector is not bound to make a formal enquiry. The Judge may find from the circumstances before him that the party did intend to evade payment. The provision as to levy of duty and penalty applies only when there is no intention to evade payment. *Raj Chandra Saha v. Gobinda Chandra*, 13 W. R. 102.

Opportunity to be given to pay.—The effect of ss. 37 (now s. 40) and 40 (now s. 43) of Act I of 1879 is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his authority under s. 69 (now s. 70). *Empress v. Janki*, 7 Bom. 82.

But payment of penalty, etc., would not protect.—Payment of duty and penalty which a person is required to pay is not a bar to the prosecution of that person if it appears to the Collector that the offence was committed with intent to evade payment of duty. The High Court said: “If this duty and penalty had been paid, then according to the provisions of s. 40 (now sec. 43), such payment would not have been a bar to the prosecution of any person who appeared to have committed an offence against the stamp law in respect to the instrument under the proviso to s. 40 (now s. 43); a criminal prosecution could not have been instituted unless it appeared to the Collector that the offence was committed with an intention of evading payment of the proper duty. It was the intention of the legislature in the first place to compel the payment of stamp duty together with a penalty. By this payment of the stamp duty the revenue would be protected from loss and would be a sufficient punishment in large majority of cases. The severer proceeding of a criminal prosecution is intended for those cases only in which there is an intention to evade the stamp law

and it is incumbent on the Collector to form an opinion as to whether such intention existed, *Empress v. Sadlamul Mahanty*, 8 Cal. 259 (261) : 10 C.L.R. 365. See also *Empress v. Dwarkanath Chowdhury*, 2 Cal. 399 ; *Empress v. Janki*, 7 Bom. 82.

Evasion to be intentional.—*Any person who appears to have committed an offence against Stamp Law.*—When the stipulation in the bond shows that the borrowers were urgently in want of money, and were unable to procure a stamp at the moment and that therefore they executed the bond on plain paper; and the bond went on, if it be necessary for the plaintiff to sue on the bond whatever penalty the plaintiff should have to pay would be paid by the defendants with interest, *held* that this did not amount to an intention to evade the stamp law. If the learned Judge of the Court of Small Causes wanted to infer from this an intention to evade the stamp law, it would be the duty of the Judge to receive oral evidence to the contrary which he refused to do. *Shashi Bhusan Banerjee v. Tarachand Kar*, 3 B. L. R. A. C. 329. See also *Empress v. Saddamul Mahanty*, 8 Cal. 259 (261) : 10 C.L.R. 365; *Empress v. Dwarkanath Chowdhury*, 2 Cal. 399 ; *Empress v. Janki*, 7 Bom. 82.

Regulation XVIII of 1827.—The question as to the intention of the parties to an instrument in not sufficiently stamping it was to defraud revenue does not properly arise under sec. 13 of Regulation XVIII of 1827. *Kastur Bhavani v. Appa and another*, 5 Bom. 621 (629).

Acting on advice of a Registering Officer.—When a party stamped an instrument according to the advice of the Registering Officer, which was found to be erroneous, *held* that there is no attempt to evade the Stamp Act. *Sonaka Choudhurrani v. Bhobunjoy Saha*, 5 Cal. 311.

Proviso.—Under the proviso to s. 43 of the Act *there must be a clear proof of an intention to evade payment of the proper duty* for the prosecution of the accused after the penalty in respect of the document was paid. *Rang Lal Sahu v. Emperor*, 108 I.C. 427 : 29 Cr.L.J. 397.

Compare this section with the provisions of ss. 62 and 64 and the cases cited thereunder as to the presence of intention in the mind of the party.

44. (1) When any duty or penalty has been paid under section 35, section 37,

Persons paying duty or penalty may recover same in certain cases.

section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery, any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

NOTES.

See s. 41 of Act I of 1879. This section provides for recoupment by person not bound to pay stamp duty, but which he has been compelled to pay under orders of competent authority. The old case of *Garuda v. Janakayya*, 1 Mad. H. C. R. 124, may be deemed to have been overruled. If such costs have been included in the decree of the court, then no suit lies to recover the amount so paid in duty and penalty.

Application.—S. 44 of the Stamp Act does not apply to the case of penalty illegally levied, *Rajendra Narayan v. Ghafoor Khan*, (1924) A.I.R. 110 (Oudh): 27 O. C. 113: 73 I.C. 307.

Scope.—S. 44 is intended to authorize an innocent party, who was made liable to pay penalty and deficiency in duty, to recover from the real defaulter the amount of penalty and deficiency in duty, as well as to authorize a party to claim contribution from other parties to the instrument owing to their common default. *Raman Chetty v. Nagapa Chetty*, 2 L. W. 1024: 31 I.C. 285.

Suit to realize duty and penalty paid.—The provisions of s. 44 are important as showing that when any duty or penalty has been recovered from any person in respect of any instrument, and some other person was bound to bear the expense of providing the proper stamp, the person from whom the duty and penalty have been recovered shall be entitled to recover from such other person the amount of duty and penalty so recovered, *Secretary of State for India in Council v. Basaratulla*, 30 All. 271 : 5 All. L.J. 262 : (1908) All. W.N. 130.

Old Law.—A suit lies for recovery of penalty and Stamp duty paid by the plaintiff in his suit against the defendant on an instrument executed by the defendant, and which were payable by the defendant. Ss. 13 and 43 C. P. C. (Act XIV of 1882) have no application to such a suit, *Ishar Das v. Masud Khan*, 6 All. 70 : (1883) All. W.N. 211. Where an unstamped instrument was executed when Act XVIII was in force and on a suit brought on the instrument penalty and stamp duty were levied under Act I of 1879, and the plaintiff brought a suit to recover the penalty under s. 41 (now s. 44)

of Act I of 1879, the defendant contended that the instrument having been executed when Act XVIII of 1869 was in force, he is not liable for the penalty recovered from the plaintiff, *held*, that although the instrument was executed before Act I of 1879 came into force, still that Act applied as the language of s. 34 (now s. 35) shows, hence the penalty was rightly recovered and the defendant is liable to repay the penalty and stamp duty paid; such a suit is not a suit for "debt, damage or demand" and therefore cannot be instituted in a Provincial Small Cause Court, *Atma Ram v. Sardar Kuar*, (1884) All. W.N. 328. But when the trial court admitted an instrument in evidence and the appeal court without exercising the power, under s. 35 and s. 61 of the Stamp Act and sending the instrument to Collector, levied the penalty and duty, *held*, that the action of the appeal court was *ultra vires* and the defendant can not be made liable under s. 44 of this Act. *Rajendra Narayan v. Gafoor Khan*, 1924 A.I.R. 110 (Oudh) : 27 O.C. 213 : 73 I.C. 307. When an insufficiently stamped instrument has been filed before Court, that Court has to impound it and send an authenticated copy of it together with a statement as to the amount of duty and penalty levied in respect thereof. The decision then rests with the Collector whether the instrument is really insufficiently stamped. The Collector has further to give a certificate as to payment of duty and penalty and on the basis of such certificate the person paying them for the time being would be entitled, if he so desires, to recover the money under s. 44 of the Stamp Act from the person liable to pay the duty on the instrument. *Pearey Lall v. Sukhan Ram*, 91 I.C. 772 : 1926 A.I.R. 472 (All.).

No suit lies if costs not included in the decree.—A deed of mortgage was found during trial to be insufficiently stamped. The plaintiff made good the deficiency although the liability was really on the defendant. The payment of the deficiency in stamp was included in the costs of the decree which was in plaintiff's favour, *held* that the plaintiff cannot sue to recover the amount of stamp paid for making up the deficiency as sub-section (3) to s. 44 of the Indian Stamp Act is a bar to such a suit. *Ram Singh v. Man Singh*, 49 All. 501 : 25 All. L.J. 567 : 100 I.C. 737 : 1927 A.I.R. 564 (Allahabad).

Effect of certificate.—"Sub-section (2) of sections 40, 42 and 44 declare that the certificate shall operate as conclusive evidence that the instrument is duly stamped, or that it is not liable to stamp duty as the case may be; the only exception thereto is that provided by s. 61, *viz.*, that in the case of a certificate granted by a court under s. 42 being superseded by a declaration of the appellate court under s. 61 (2), the certificate shall have no validity against a criminal prosecution." *Per Bhashyam Ayyangar J.*, in *Reference under Stamp Act*, s. 57, 25 Mad. 752 (757).

Costs.—S. 44 (3) of the Stamp Act does not confer on the Magistrate any jurisdiction to deal with costs, other than those provided by s. 148 (3) of the Code of Criminal Procedure. *Popuri Peddanna v. Thummalagunta Kotiah*, 13 M.L.J. 224 : 14 Ind. Cas. 761 (Mad.). S. 148 (3) of the Code of Criminal Procedure confers no jurisdiction on the Magistrate to include such costs as penalty paid on insufficiently stamped instruments. *Thummalagunta Kotiah v. Popuri Peddanna*, 19 Ind. Cas. 306 (Mad.).

45. (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Power to Revenue-authority to refund penalty or excess duty in certain cases.

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

NOTES.

See s. 42 of Act I of 1879. Sub-section (2) is new. See also s. 16 (b) of Act X of 1862. This section provides for refund of penalty and excess duty. The application is to be filed within one year.

In the North-West Frontier Province, for "Chief Controlling Revenue-authority" read "Revenue Commissioner"—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901, Punjab and North-West Code).

Duty of Civil Court.—It is not the duty of a civil court to receive and submit to Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the Stamp Act. The pauper himself should make timely application. *Golam Guffor v. Akram Hossain Choudhury*, 10 W.R. 357.

Appeal.—No appeal lies on the question of levy of stamp duty and penalty by a civil court to a higher civil court, as such an order is not a decree nor a fine imposed by a civil court. *Sonaka Choudhurai v. Bhoobunjoy Saha*, 5 Cal. 311 (313-314). See also *M. P. Currie v. M. R. Chetty*, 11 W.R. 250 C.R.; *Ramsami Chetty v. Ramsami Chetty*, 5 Mad. 220; *Devchand v. Hirachand Kamraj*, 13 Bom. 449.

Power of High Court.—Any opinion by the High Court would be extra-judicial and the High Court has no jurisdiction to entertain the question, *Sonaka Choudhurai v. Bhoobunjoy Saha*, 5 Cal. 311 (314).

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 38.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

NOTES.

See s. 43 of Act I of 1879, s. 25 of Act XVIII of 1869 and s. 21 of Act X of 1862.

Person.—Person would include all persons mentioned in s. 33. This section exonerates all persons sending the instrument to the Collector under s. 38 (2) in case of its loss, destruction etc., in transit. There is no provision that such copy is to be made over to the party. Compare ss. 38 and 42 *supra*.

47. When any bill of exchange, or promissory note chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill or note, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill or note shall, so far as respects the duty, be deemed good and valid :

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, or note.

NOTES.

See s. 44 of Act I of 1879, and s. 26 of Act XVIII of 1869.

Amendment.—The words “or promissory note” have been substituted for the words “promissory note or cheque” and the words “or note” have been substituted for the words “note or cheque” wherever they occur by Act V of 1927, sec. 5 (5).

This section empowers the person, to whom an unstamped bill of exchange, or promissory note is presented to affix the necessary stamp and cancel the same.

"The cancellation of a stamp will not be invalidated if done at the time of execution by the payee of the hundi with the authority of the drawer. . . . S. 44 (now s. 47) simply provides that the person to whom a bill of exchange or promissory note chargeable with one anna duty, is presented unstamped for payment need not refuse payment on that account, but may affix an one anna stamp thereto and cancel it and then make payment." *Bhowanji Harblum v. Devji Panja*, 19 Bom. 625 (639).

An intermediate holder not to stamp a bill.—S. 47 of the Indian Stamp Act, 1899, which enables the person to whom a demand bill is presented for payment to stamp it and to recover the cost of such stamp from the drawer, cannot be interpreted as permitting the bill being stamped by an intermediate holder of the bill who is neither the drawer nor the drawee in order to validate such bill and thereby enable him as a subsequent holder of the bill to sue the drawer. *Bhowanji Narsi v. Assan Pitambardas*, 19 S.L.R. 12 : 86 I.C. 357 : 1925 A.I.R. 241 (Sind). See also *Dayaram v. Chandulal*, 27 Bom. L.R. 1122 : 90 I.C. 689 : 1925 A.I.R. 520 (Bom.).

48. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

Recovery of duties
and penalties.

NOTES.

This section is new. This section provides for the procedure for the realization of the penalty imposed. S. 29 is to be referred to in ascertaining the person from whom the duties are due, but the provisions of s. 29 are subject to contract. See also s. 44 of the Act.

Demand by Collector from a wrong person.—"If the Collector has required it from a wrong person, his procedure was open to review, as provided by Chapter VI of the Act. No step was taken to review the Collector's orders. Therefore, the Collector was acting within the authority given him by section 48 in ordering attachment. Furthermore, we are of opinion that it was the plaintiffs who wished the documents admitted in evidence in support of their claim, they are the persons from whom the Collector in the first instance, can recover the duty and penalty required before the documents can be admitted in evidence." *Secretary of State for India in Council v. Basaratullah*, 30 All. 271 : 5 All. L.J. 262 : (1909) 28 All. W.N. 130.

Old Law.—The duties and penalties cannot be recovered by distraint or other process. *Sonaka v. Bhoobanjy*, 5 Cal. 911.

48A. Bengal.—*Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Bengal with a higher rate of duty under the Bengal Stamp (Amend-*

Validity of certificate or endorsement in respect of instruments for which higher rate of duty payable in Bengal.

ment) Act, 1922, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, has been paid on such instrument.

• **48A. U. P.** [Upto 31st March 1934]—*Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in the United Provinces with a higher rate of duty under the United Provinces Stamp*

Validity of certificate or endorsement in respect of instruments for which higher rate of duty is payable in the United Provinces.

(Amendment) Act, 1932, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the duty chargeable under the United Provinces Stamp (Amendment) Act, 1932, has been paid on such instrument.

48A. Burma. [Upto 31st March 1935.]—*Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Burma with a higher rate of duty*

Validity of certificate or endorsement in respect of instruments for which higher rate of duty payable in Burma.

shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the higher rate of duty chargeable in Burma has been paid on such instrument.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

49. Subject to such rules as may be made by the [Local Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamp spoiled in the cases hereinafter mentioned, namely :—

Allowance for spoiled stamps.

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person :

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto :

(c) in the case of bills of exchange payable otherwise than on demand, or promissory notes—

(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance : provided that the paper on which any such stamps are impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon :

- (2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands :
- (3) the stamp used or intended to be used for any such bill of exchange, or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless although the same, being a bill of exchange, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee : provided that another completed and duly stamped bill of exchange, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note :
- (d) the stamp used for an instrument executed by any party thereto which—
 - (1) has been afterwards found to be absolutely void in law from the beginning :
 - (2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended :
 - (3) by reason of the death of any person by whom it is necessary that it should be executed without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed :
 - (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact in-

complete and insufficient for the purpose for which it was intended :

- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value :
- (7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value :
- (8) is inadvertently and undesignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

NOTES.

See s. 51 of Act I of 1879, ss. 45 and 46 of Act XVIII of 1869, s. 50 cl. (1) of Act X of 1862. See s. 9 of the Stamp Duties Management Act, 1891 (54 and 55 vict. C. 38).

Amendments.—The words “Local Government” were substituted for words “Governor General in Council” by Pt. I of the Schedule to the Decentralization Act, 1914 (4 of 1914). • The word “cheque” and the words “or cheque” have been omitted in this section wherever they occur; the words “payable otherwise than on demand” are inserted after the words “bills of exchange” in clause (c); and the words “any such bill of exchange” are substituted for the words “any bill of exchange” in clauses (1) and (3) of this section by Act V of 1927, sec. 5 (b).

This section refers to refund as to stamps. The various clauses refer to various stages in the preparation and execution of the instruments.

Clause (a) refers to the stage when the stamp is spoiled or rendered unfit before execution.

Clause (b) refers to the stage when the instrument is written out but the same is not executed or signed by the party. This may arise from events subsequently arising.

Clause (c) refers to Bills of Exchange payable otherwise than on demand, promissory notes where these have not been accepted or made use of, etc.

Clause (d) refers to refunds after execution.

Impressed Stamps.—These are stamps which are printed on the paper, and may be coloured stamps (rule 8) or perforated (rules 10).

An instrument endorsed by the Collector as properly stamped, is an instrument bearing impressed stamp and the duty may be refunded. *Reference under the Stamp Act*, 11 Mad. 37.

Application for refund. *Who can apply.*—A person other than the person whose name is endorsed on the stamp paper can apply for refund. *Abdul Rahman v. Ruhim Baksh*, 116 I.C. 713 : 1929 A.I.R. 332 (Lah.).

Enquiry.—The enquiry under this section should be by the Collector himself and the Collector cannot ask any of his subordinate officers to enquire. *Empress v. Niaz Ali*, 5 All. 17 : 2 All. W.N. 161. As to the evidence to be adduced, see *Rules infra*.

Misuse by officer of court.—When stamp paper was purchased so that the sale certificate may be engrossed on it, but it was inadvertently punched by an officer of the court, *held* that the stamp was not thereby rendered unfit for the purpose for which it was purchased. *Reference under Stamp Act*, 1879, 18 Mad. 235 F.B.

Collector not a court.—When a muktair applied for a renewed stamp in place of one damaged stamp, but it subsequently appeared that the stamp was damaged for fraudulent purposes, and the Collector made over the parties for trial, *held* that the Collector to whom the application was made was not a court. *Queen v. Gour Mohan Sen*, 3 B.L.R. A. Cr. 6.

Cls. (5) & (7) Refunds to parties not named on the stamp paper.—The parties intended that a mortgage deed should be executed, which would provide for transfer of possession to secure payment of the money to be advanced. The instrument was engrossed on a stamp paper but the sum named therein appeared to be less than the debt and the mortgagee refused to carry out the transaction; thereafter a separate deed of conditional sale in favour of another for the amount of debt was executed; *held* that the party is entitled to a refund. *Reference under Stamp Act, s. 46, 16 Mad. 459: 2 M.L.J., 181 F.B.*

In the above case the parties were not the same, but the decision holds good when the parties are the same under the present section as it stands now by the addition of the words "*between the same parties*" in cl. 7.

Application for relief under section 49 when to be made.

50. The application for relief under section 49 shall be made within the following periods, that is to say,—

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument:
- (2) in the case of stamped paper on which no instrument has been executed by any of the parties thereto, within six months after stamp has been spoiled:
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,—

- (a) when the spoiled instrument has been for sufficient reasons sent out of British India, the application may be made within six months after it has been received back in British India:
- (b) when, from unavoidable circumstances, any instrument for which another instrument

has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

NOTES.

See s. 51 pro. (b) of Act I of 1879, and s. 45 of Act XVIII of 1869.

Time limit.—The application contemplated by this section is to be filed within six months from the dates mentioned in (2), (3) and proviso (a) and (b) and within two months in the cases coming within s. 49 (d) (5).

51. The Chief Controlling Revenue-authority [or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf] may, without limit of time, make allowance for stamped papers used for printed forms of instruments [by any banker] by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said [banker,] company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

NOTES.

This section is new.

Amendments.—In the North-West Frontier Province, for “Chief Controlling Revenue-authority” read “Revenue Commissioner”—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code. The words “or the Collector etc.” were inserted by Part I of the Schedule to the Decentralization Act, 1914 (4 of 1914). The words “by the banker or” and “banker” were inserted by s. 6 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

This section refers to refunds by the Chief Controlling Revenue Authority in respect of printed forms no longer required by Corporations or Bankers.

Limitation.—Allowances under this section may be made at any time.

52. (a) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty ; or

Allowance for misused stamps.

(b) When any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13 ;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

NOTES.

See s. 52 of Act I of 1879 and s. 10 of the Stamp Duties Management Act, 1891 (54 and 55 vict. C. 38).

This section refers to Adhesive and Impressed Stamps. Sub-section (b) obviously refers to Impressed Stamps.

Adhesive stamps.—This section enacts that an allowance can be made in case (1) of misuse and (2) not being required for use. The cause for the distinction between allowances for impressed and adhesive stamp is apparent when it is considered that the instrument is written out on the impressed stamp and as regards the adhesive the instrument is written out on plain paper and when everything is complete the adhesive stamp is affixed and cancelled.

Where a stamp of improper description has been used.—Where in a suit for partition, the plaintiff by mistake filed court fee stamp instead of a non-judicial stamp, the Court refused to grant a refund of the court fee stamp, because the expression ‘stamp of a description other than that prescribed for such instrument’ evidently refers to non-judicial stamp, either adhesive or impressed, as mentioned in the Stamp Act. S. 52 does not cover a case in which a court fee stamp has been erroneously used where a non-judicial stamp ought to have been used under the provisions of the Indian Stamp Act. It does not follow however, that because there is no statutory

provision in either the Court Fees or the Stamps Act, the revenue authorities may not afford the petitioner relief, if a proper application is made for their consideration. Such relief, however, may be granted only as a matter of indulgence, and cannot be claimed by the petitioner as a matter of right, *Shaikh Rafiuddin v. Latiff Ahmed*, 14 C.W.N. 1101 (1103, 1104) : 12 C.L.J. 324 : 7 Ind. Cas. 94.

Limitation.—The application must be made within 6 months after the date of the instrument.

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value; or
- (b) if required, and he thinks fit, stamps of any other description to the same amount in value; or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

NOTES.

See s. 53 of Act I of 1879, S. 45 of Act XVIII of 1869 and S. 53 (3) of Act X of 1862. This section merely enacts what is to be given in exchange for an allowance on an application filed under the previous section.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and

- (b) that he had paid the full price thereof ; and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered :

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

NOTES.

See s. 54 of Act I of 1879 ; section 45 of Act XVIII of 1869.

The proviso is new. See s. 12 of the Stamp Management Act, 1891 (54 and 55 vict. c. 38). Clauses (a), (b) and (c) refer to the items to be proved before the application is allowed. These, of course, will have to be set out in the application.

Limitation.—The application is to be filed within six months of the purchase of the stamp.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less :

Allowance on renewal of certain debentures.

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the Governor General in Council may direct.

Explanation.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes :—

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same ;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same ;

- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

NOTES.

This section is new.

Limitation.—The time limit is one month.

Debenture.—As to debentures issued by Local Authorities under Local Authorities Loans Act, 1879—See s. 8 of this Act. As to duty on debentures, see Art. 27.

The Collector, under rule 21 in refunding the stamps under this section, is to cancel the original debenture by writing across it the word cancelled with his signature and date.

CHAPTER VI.

REFERENCE AND REVISION.

56. (1) The powers exerciseable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed

to assess and charge the duty (if any) in conformity with such decision.

NOTES.

See s. 45 paragraphs 2 and 3 of Act I of 1879 and s. 40 of Act XVIII of 1869.

In the North-West Frontier Province, for "Chief Controlling Revenue-authority" read "Revenue Commissioner"—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code.

Amendment.—The words and figures "and under clause (a) of the first proviso to sec. 26" in sub-sec. (1) were inserted by s. 7 of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Construction.—Where a Sub-Registrar impounded two instruments under s. 30 of the Stamp Act and sent them to the Collector who certified that no more stamp duty is chargeable, the Inspector-General of Registration being of opinion that the certificate is wrong brought the matter to the notice of the Board of Revenue, who in turn referred the matter to the High Court under s. 57 of the Act. Bhashyam Ayyangar, J., said: "It may be that grammatically the conclusion contended for is not inadmissible, but grammatically the wording of s. 56 (1) is also susceptible of the more limited interpretation, *viz.*, in all cases, the Board can exercise its control only before the power of the Collector has by its exercise, been executed and exhausted. Even if it is construed literally in a comprehensive sense, it is only a general provision and according to the principle of the canon of interpretation *generalia specialibus non derogat* it cannot be construed as overriding or limiting the operation of the special provision made as to the conclusive character of a certificate made by the Collector, especially when the general section was having its proper operation without affecting the special provision." *Reference under Stamp Act*, s. 57, 25 Mad. 752 (762).

Powers exercisable.—A Full Bench of the Madras High Court in *Reference under Stamp Act*, sec. 57, 25 Mad. 752 (761) held, (Sir Arnold White, C.J., *contra*) that the word 'powers' was advisably qualified by the word 'exercisable' with a view to denote the intention of the Legislature that the Collector's powers are to be controlled by the Board of Revenue only before they have been actually executed and a right has thereby accrued to the party. If it had been the intention of the Legislature that anything which has been done by the Collector in the exercise of his powers should be subject to revision by the Board of Revenue, the section would have been worded in a different manner, and if that were the intention it is menced with inconceivable that sub-section (2) of section 40 would not have com- the word "subject to the provisions of section 56 (1)" and that the same expression would not also have been inserted in sub-section (2) of sections 42 and 44.

Scope.—The reference contemplated by this section is confined to the amount of duty payable. See *Enat Mondal v. Balaram Dey*,

3 C.W.N. 581. A Sub-registrar or Registrar can order a document to be produced before it after it has been registered and delivered to the party concerned with a view to examining the stamp duty thereon and making a reference to the Collector under s. 33 of the Stamp Act. The Collector's order thereon for payment of extra duty and penalty were also *ultra vires*. The Financial Commissioner can interfere with the orders of the Collector under s. 56 of the Stamp Act and can make a reference to the High Court under s. 57 of the Stamp Act. *Thakurdas and others v. Emperor*, 1932 A.I.R. 495 (L): 138 I.C. 758 F.B.

Control.—The powers conferred upon the Collector by Chapters IV and V and s. 26 (a) can be controlled by the Chief Controlling Revenue Authority, but that does not prevent such authority from stating a case to the High Court if a document otherwise comes to its notice.

The power of control, when can be exercised.—The power conferred by s. 39 and in Chapter V by ss. 49, 52, 53, 54 and 55 may be controlled by the Board of Revenue under s. 56 (1) and a reference to these sections will clearly show that the Board can control the Collector's power only before it is actually executed and that in the nature of things the action resulting from the exercise by the Collector of such power, cannot be undone. Even in respect of documents impounded by the Collector or sent to him by any other officer who has impounded the same, if before the Collector makes the certificate, the matter comes to the Board's notice, as it may, at the instance of the party concerned or otherwise, though not on a reference made to it by the Collector under s. 56 (2), the Board can, under s. 56 (1) control the exercise of Collector's powers in the matter of making a certificate under s. 40 or s. 42 and thus, it will be seen, full effect is given to the phrase "in all cases" occurring in s. 56 (1). *Reference under Stamp Act*, s. 57, 25 Mad. 752 (760). See also *Stamp reference by the Board of Revenue*, 40 All. 128 F.B.: 16 All. L.J. 49: 47 Ind. Cas. 299 and *In re Cooke and Kevey*, 59 Cal. 1171: 1932 A.I.R. 786 (Cal.).

Power of control before the instrument is actually executed.—"I think it highly probable that in s. 56 (1) the draftsman advisedly qualified the word 'powers' by the adjective 'exercisable' with a view to denote the intention of the Legislature that the Collector's powers are to be controlled by the Board of Revenue only before they have been actually executed and a right has thereby accrued to the party." *Reference under Stamp Act*, 25 Mad. 752 (761). "Sub-sec (1) of s. 56 confers very wide controlling powers on the Chief Controlling Revenue Authority and there seems to be no good reason why the powers should not be exercised even before the Stamp duty is paid." *Thakurdas and others v. Emperor*, 138 I.C. 758: 1932 A.I.R. 495 (Lah.) F.B.

Irregularity in endorsement.—The remedy for an irregularity in making an endorsement on a promissory note, will be by appeal or revision by the Chief Revenue Authority under s. 40. *Giridhari Das v. Jagannath*, 3 All. 115.

57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

Statement of case by
Chief Controlling Revenue-authority to High
Court or Chief Court.

- (a) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be ;
- (b) (i) if it arises in Agra or in Ajmer—to the High Court of Judicature at Allahabad ;
- (ii) if it arises in Oudh—to the Chief Court in Oudh ;
- (bb) if it arises in the territories for the time being administered by the Lieutenant-Governor of Bihar and Orissa—to the High Court of Judicature at Patna ;
- (c) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab or in British Baluchistan—to the High Court of Judicature at Lahore ;
- (d) if it arises in the Central Provinces—to the High Court of Judicature at Bombay ;
- [if it arises in Burma—to the High Court of Judicature at Rangoon] ;
- (e) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

NOTES.

See s. 46 of Act I of 1879 and s. 41, clauses (a) and (b) of Act XVIII of 1869.

Amendments.—In the North-West Frontier Provinces, for “Chief Controlling Revenue-authority” read “Revenue Commissioner”—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code.

Clause (b) was substituted by sec. 2 and Schedule of the Oudh Courts (supplementary) Act, 1925 (32 of 1925).

The clause (bb) was inserted by the Repealing and Amending Act, 1916 (13 of 1916).

The words “High Court of Judicature at Lahore” in cl. (c) were substituted for the words “Chief Court of the Punjab” by the Repealing and Amending Act, 1919 (18 of 1919).

• The clause “if it arises in Burma . . . to the” in cl. (d) was inserted by the Lower Burma Courts Act, 1900 (6 of 1900), s. 47 and Schedule I, Burma Code, and the words “High Court of Judicature at Rangoon” were inserted by sec. 2 and Sch. I of the Repealing and Amending Act, 1923, (XI of 1923).

Proceedings in N. W. Frontier Province.—As regards proceedings under sections 57 to 60 of this Act in the North-West Frontier Province, the High Court of Judicature at Lahore is the High Court—see s. 6 (1) (c) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code as amended by the North-West Frontier Province Law and Justice (Amendment) Regulation, 1919 (1 of 1919).

Construction.—“Case.”—The word “case” as used in s. 57 of the Stamp Act, means a matter which has to be disposed of by the Revenue Authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue Authorities and not a matter which has been determined finally and conclusively by the Collector or other authorities. *Reference under Stamp Act*, s. 57, 25 Mad. 752. See also *Reference under Stamp Act*, s. 57, 25 Mad. 751. See also *In the matter of Khub Chand* 40 All. 128 F.B. : 47 I.C. 299 : 16 A.L.J. 49, where it was held that as the certificate by the Collector as to the sufficiency of stamp duty is conclusive, there is no room for further disposal of the case.

What cases can be referred.—Where a Collector of a District having received the deficit duty and penalty, made a certificate under s. 40 (1) (a) of the Stamp Act, the Chief Revenue Authority has no power to make a reference under s. 57 of the Stamp Act. *Stamp Reference by the Board of Revenue*, 40 All. 128 F.B. : 16 All. L.J. 49 : 47 Ind. Cas. 299.

Where a Sub-registrar impounded two instruments produced before him for registration on the ground that they are insufficiently stamped, but the Deputy Collector to whom the matter was sent certified under

s. 32 that they are exempt from duty, the Inspector-General of Registration referred the matter to the Board of Revenue, who again referred the matter to the High Court for opinion. The High Court held, that as the case has been finally disposed of by the certificate by the Deputy Collector, there is no case which can be referred to them. Hence they have no jurisdiction to decide. Bhashyam Ayyangar, J., said: "If the Collector had, under s. 40 sub-section (1) (a), ordered the payment of certain duty on a document, the Inspector-General of Registration could, I consider, if he thought, that the order was wrong, refer the matter to the Board who could state it to the High Court for judgment, as being a case not up till then conclusively settled but once under s. 40, sub-sec. (1) (a) a certificate has been granted, there is no case not finally disposed of and there is consequently nothing regarding which the High Court can be asked to pronounce judgment." *Reference under Stamp Act s. 57*, 25 Mad. 751. See also *Reference under Stamp Act s. 57*, 25 Mad. 752. But this applies only in cases where the Authority has any doubt, *Keval v. Jetha*, 1883 P.J. 334; *Reference under Stamp Act*, s. 49, 11 Mad. 38 F.B.

If an instrument which had been executed be brought to the Collector for his opinion, then the subject can either pay under s. 32 what the Collector requires or be liable to have the Collector exercise his powers under s. 33 to impound the document and commence proceedings under s. 40. Without complying with the Collector's orders and without attempting to get a certificate under s. 32 which could only be got by a payment, if the subject applies to the Board of Revenue, without the document being impounded then the Board of Revenue would have no duty to perform and thus not entitled to ask the High Court to decide the matter. The wide words 'or otherwise coming to its notice' can only be given effect to in cases where the controlling words of s. 59 can also be given effect to. If the Collector impounds such a document and commences a case under s. 40, that enables the Board of Revenue to intervene in the case. *In re Cook and Kelvey*, 59 Cal. 1171 (1173) : 1932 A.I.R. 736 (Cal.). But in *U. K. Janardhan Rao v. The Secretary of State for India*, 58 Cal. 33 : 34 C.W.N. 470 : 127 I.C. 775 : 1931 A.I.R. 193 (Cal.) where the reference was made under the orders of the High Court this point was not discussed. The Board of Revenue apparently had no duties to perform.

Facts to be stated.—*In the matter of Shiam Sundar Lal v. Shankar Lal*, 50 All. 503 : 26 A.L.J. 277 : 1928 A.I.R. 162 (All.), all the questions referred to were not decided as all the facts necessary were not fully stated.

Opinion—to be stated.—When a Commissioner makes a reference he is expected to express his opinion on the point referred, *Waman Marland v. The Commissioner, General Division*, 49 Bom. 73 : 26 Bom. L.R. 942 : 84 I.C. 421 : 1924 A.I.R. 408 (Bom.).

When the instrument is not in existence.—If the instrument be not in existence on the date of reference, the High Court has no jurisdiction to give an opinion on a reference by the Board of Revenue. *In re Stamp Reference*, 37 All. 125 : 13 All. L.J. 47 : 27 Ind. Cas.

501. [But see s. 31 ; the Collector can give his opinion on instruments before execution and if in doubt may refer to the Chief Controlling Authority who may in a fit case refer to the High Court].

The High Court is bound to advise upon the actual facts before it, and have no right to speculate upon the possible nature of the transaction, of which it has no knowledge. *In re. Thomson's Policy*, 3 Cal. 347 (350).

Reference as to kind of stamp.—A question as to the kind of stamp to be used cannot be referred to the High Court. *Gopinath v. Balaram*, 1891 P.J. 284.

General Questions to the High Court.—A reference to High Court on question of a general nature and not arising out of any particular case, cannot be made. *Reference*, 1894 P.J. 141; *The Forest Conservator v. The Secretary of State for India in Council*, 1893 P.J. 449.

A reference to the High Court can only be made when there is a case which is to be disposed of by the Revenue Authority on receipt of the judgment of the High Court. No reference can be made to the High Court on an abstract question of law when there is no question pending before the Revenue Authority for disposal. *Usuf Dadabhai v. Chand Mahomed*, 27 Rom. L.R. 1273 : 91 I.C. 299 : 1926 A.I.R. 51 (Bombay).

S. 57 of the Indian Stamp Act cannot be availed of in obtaining an opinion of the High Court on questions of general nature not arising out of a particular case, *In Re Marine Insurance Policies*, 33 C.W.N. 1174 : 126 I.C. 135 : 1929 A.I.R. 799 (Cal.).

58. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of High Court or Chief Court to call for further particulars as to case stated.

NOTES.

See s. 47 of Act I of 1879 and s. 41 (c) of Act XVIII of 1869.

This section empowers the High Court and the Chief Court when they are not satisfied with the facts placed before them, to refer back for further particulars in order to enable them to dispose of the questions raised.

"In the case".—This refers to the case as contemplated in s. 57. Therefore this section is restricted to the cases in which the High Court on a reference has to decide issues referred.

59. (1) The High Court or Chief Court, upon the hearing of any such case, shall decide the questions, raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

Procedure in disposing
of case stated.

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

NOTES.

See s. 48 of Act I of 1879 and s. 41 (d) of Act XVIII of 1869.

This section lays down a rule of procedure.

The High Court or Chief Court shall decide "the case" after hearing the parties and deliver their judgment thereon. The decision is to contain grounds for the decision. Compare C. P. C., Order 46. After the judgment has been delivered, a copy of the judgment under the seal of the Court shall be sent under the seal of the court and the signature of the Registrar; the Revenue Authority on receiving such a copy shall dispose of the case in accordance with the judgment.

Sub-section (2).—When the question arose whether endorsements on a Policy of Insurance are liable to stamp duty and the case was referred to High Court by the Board of Revenue of N. W. P. under s. 41 of Act XVIII of 1869, Garh C. J. observed: "It is possible, no doubt, that the first and third instruments may have been collateral securities; but we have no information to guide us as to whether they do properly come under that description or not, and I feel very strongly that, in giving an opinion upon questions submitted to us by the Board of Revenue which may serve in the future as guide to the Board in imposing taxes upon the public, we are bound to advise upon the actual facts before us, and have no right to speculate upon the possible nature of transactions of which we have no certain knowledge. In the matter of *Thomson's Policy*, 3 Cal. 347 (350). See also *Reference under Stamp Act*, s. 57, 25 Mad. 751; *Reference under Stamp Act*, s. 57, 25 Mad. 752. But the question must be one which has not already been finally decided by Collector or other authorities, *Reference under Stamp Act*, s. 57, 25 Mad. 752; See also *In the matter of Khub Chand*, 40 All. 128: 16 A.L.J. 49 (1918): 47 I.C. 299, where it was held that after the certificate by the Collector under s. 40 (2) of the Stamp Act as to the sufficiency of duty is conclusive there is no room for further disposal in accordance with s. 59 (2) of the Indian Stamp Act. See also *In re Cook and Kelvey*, 59 Cal. 1171 (1173); 1932 A.L.R. 736 (Cal.).

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

NOTES.

See s. 49 of Act I of 1879.

In the North-West Frontier Province, "the Chief Controlling Revenue-authority" is "the Revenue Commissioner"—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation, 1901 (7 of 1901), Punjab and North-West Code.

The court must have some doubt.—Where an instrument has been treated as a promissory note a reference under s. 49 (now s. 60) of Act I of 1879 cannot be made, as the Munsiff had no doubt as to the matter under consideration. *Baiju v. Jowahir*, 195 P. R. 1883 F. B. A reference under s. 60 of the Stamp Act can be made only under the circumstances mentioned there. The Judge must feel a doubt as to the amount of duty payable on the instrument. S. 60 does not deal with a case where a reference has been made to a Collector and his decision obtained. *Mussamat Jai Devi v. Gopal Chand*, 131 P.L.R. 1906 F.B. ; *Amar Singh v. Asa*, 135 I.C. 200 : 1932 A.I.R. 172 (Lah.) S.B. ; *Reference under the Stamp Act*, 11 Mad. 38 F.B.

Clause (3)—A reference under this section if made by a District Munsiff must be made through the District Judge ; the District Judge

has no power to make a reference arising out of a matter in the Court of the District Munsiff. *Reference under the Stamp Act* s. 49, 11 Mad. 18 F.B.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal

Revision of certain decisions of Courts regarding the sufficiency of stamps.

Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty ;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

NOTES.

See s. 50 of Act I of 1879 and s. 40 of Act XVIII of 1869.

Application.—S. 50 (now s. 61) does not apply to instruments excepted under the proviso to s. 34 (now s. 35) of the Stamp Act, when such an instrument has been wrongly admitted in evidence by the first Court, *Baiju v. Jowahir*, 195 P.R. 1883 F.B. When no order is passed on the question of stamp in the Lower Court held that s. 61 is inapplicable, *Piran Ditta v. Mangal Singh*, 108 P.R. 1908.

Construction.—"A reference to s. 61 will show that the Appellate Court may revise the decision of the Subordinate Court and determine the amount of duty with which the instrument is chargeable and may require the person in whose possession or power the instrument then is to produce the same and may impound the same when produced. It will thus be seen that even if the instrument is not in the custody of the Court under proviso (a) to s. 42 (2) the Appellate Court is empowered to require the person in whose possession or power it is to produce it. Under s. 61 (3) the Appellate Court sends to the Collector a copy of the declaration made under sub-sec. (2) as well as the instrument itself, if the same has been impounded or is otherwise in the possession of the Court. Under sub-section (4) the Collector may thereupon prosecute the person criminally if he does not pay the stamp duty and penalty as adjudged by the Appellate Court, or even when he makes such payment if the Collector thinks that the offence was committed with an intention of evading payment. Notwithstanding that for the protection of Stamp Revenue, section 61 enables the Appellate Court to revise the decision of a Subordinate Court on questions of stamp duty ; proviso (b) to s. 61 (4) expressly declares that the declaration of the Appellate Court under sub-section (2) as to higher duty and penalty shall be valid only for the purpose of a criminal prosecution—if the Collector deems fit to institute such

prosecution—but that such declaration shall not affect the validity of an order of the Subordinate Court admitting it in evidence or of the certificate granted by it under s. 42, that the proper stamp duty and penalty have been levied, notwithstanding that the same is less than that declared by the Appellate Court.” *Per Bhashyam Ayyangar, J.*, in *Reference under Stamp Act*, s. 57, 25 Mad. 752 (757, 758).

Scope.—S. 61 is passed for protection of Government Revenue but it does not affect the provisions of s. 36 of the Stamp Act which provided that when an instrument has been admitted in evidence that admission cannot be questioned at a later stage. *Syed Basir-ud-din v. Kalika Prasad Singh*, 7 Ind. Cas. 582.

“S. 50 (now s. 61) empowers an Appellate Court of its own motion, or on the application of the Collector, to take into consideration the order of the Subordinate Court admitting an instrument in evidence upon payment of the duty and penalty, *but for one purpose merely*, that is, for the purpose of ascertaining whether Government Revenue has suffered; whether a higher duty and penalty than that required by the Court of first instance ought to have been demanded from the person filing the document.” *Punchanund Dass Chowdhury v. Taramoni Chowdhurani*, 12 Cal. 64 (66). See also *Chinnaya Rari v. Ramaya*, 4 Mad. 140; *Reference under Stamp Act*, 8 Mad. 564; *Gurpalapa v. Narovithal*, 13 Bom. 493.

Objection in Appeal Court.—An objection may be taken in the appeal Court to an unstamped document and such Appeal Court should entertain it and order that the document be stamped and penalty imposed *Safdar Ali Khan v. Lachman Dass*, 2 All. 554 (554, 560).

Irregularity in endorsement.—An irregularity by the Collector in endorsing an instrument can be cured only under this section. *Girdhari Das v. Jagannath*, 3 All. 115 (117).

Collector's power of reference. *Decision of a P. S. C. C. Judge.*—In reference under Stamp Act, s. 50, a reference by Collector on a decision by the Provincial Small Cause Court, admitting an insufficiently stamped instrument on payment of insufficient duty and penalty, was entertained. *Reference under Stamp Act*, s. 50, 15 Mad. 259.

The Collector in referring a matter to the Court for action under s. 61 of the Stamp Act need not issue notice to the person interested.

The question of prosecution by the collector for an offence against the Stamp Law is to be decided by the collector or irrespective of any action by the revision court. *Deputy Commissioner of Pertabgarh v. Ram Harakh*, 93 I.C. 909 : 1926 A.I.R. 397 (Oudh).

Procedure when an unstamped or improperly stamped document has been received in evidence in Court.—When unstamped document is admitted in evidence such admission cannot be questioned in appeal except under s. 61 of the Stamp Act. *Kondapi Seshayya v. Venkata Subbayya Chetty*, 31 M.L.J. 234 (239). When an insufficiently stamped instrument is admitted in evidence by the first Court, such admission cannot be questioned except as provided

in s. 61 of the Stamp Act, by the Appeal Court. *Biswanath Bhattacharya v. Gavinda Chandra Das and others*, 29 C.L.J. 205 (311) : 23 C.W.N. 534 : 51 Ind. Cas. 88; *Runglal Kalooram v. Kedar Nath Kesriwal*, 27 C. W. N. 513 (520); *Reference under the Stamp Act*, s. 46, 8 Mad. 564. When an appeal Court considers a document, which has been admitted in evidence by the trial Court, to be insufficiently stamped, it can only question the decision under s. 50 (now s. 61) of Act I of 1879. *Gurupadapa Bin Irappa v. Naro Vithal Kulkarai*, 13 Bom. 493 (456); *Deva Chand v. Hirachand Kamraj*, 13 Bom. 449 (456, 457); *Adarji Dorabji v. Rajaram Jhurakhan Lal*, 1897 P.J. 382.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

62. (1) Any person—

Penalty for executing,
etc., instrument not duly
stamped.

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand or promissory note without the same being duly stamped; or
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- (c) voting or attempting to vote under any proxy not duly stamped :

shall for every such offence be punishable with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

NOTES.

See s. 61 of Act I of 1879; Ss. 29 and 30 of Act XVIII of 1869. S. 62 (2) is s. 35 of the Companies Act (Act VI of 1882).

This section is apparently directed against the person who executed it or in the case of a bill of exchange or promissory note transfers or endorses it to another person. A witness is not affected by this section. A proxy who votes without the instrument being properly stamped is also within this section. The instrument must also be chargeable with duty which means that the instrument should be one within the schedule to this Act.

Under s. 70 a sanction of the Collector for the prosecution must be obtained *before* the prosecution is started.

Amendments.—In clause (a) of sub-section (1) of this section the word “cheque” has been omitted and after the words “bill of exchange” the words “payable otherwise than on demand” have been inserted by Act V of 1927, sec. 5 (7).

Construction.—The terms “accepting” as used in s. 61 (now s. 62) of Act I of 1879 does not mean “receiving” but “executing as acceptor.” *The Queen v. Gulam Hussain Saheb*, 7 Mad. 71; *Queen Empress v. Nihal Chand*, 20 All. 440 : (1898) 18 All. W.N. 108.

The word “person” as used in s. 61 (now s. 62) and in s. 64 (now s. 65) of Act I of 1879 includes members of a trading partnership. *Empress v. Khetter Mohan Chowdhury*, 27 Cal. 324 (333) : 4 C.W.N. 440.

The words “signing otherwise than as a witness” in s. 61 (now s. 62) of Act I of 1879 include writing a person’s name by himself or by his authority with the intention of authenticating an instrument as being that of the person whose name is so written. An ordinary agent if authorized so to sign would come under the section; therefore, a clerk who signs a firm’s name in some letters under authority

also comes under this section, although he may have written the letters under the dictation of the manager of that firm. *Empress v. Khetter Mohan Chowdhury*, 27 Cal. 324 (332) : 4 C.W.N. 440. but see *Golam Husain Ariff v. The Emperor*, 8 C.W.N. 376 (380). See cases *infra*.

The word "executing" in s. 62 must mean very much the same as "signing" and it must be held to mean "signing" so as to complete the document so that it may have full legal effect. *Emperor v. Brij Lal Saran*, 32 All. 198 : 7 All. L.J. 180 : 5 Ind. Cas. 180. See also *Emperor v. Panna Lal*, 24 A.L.J. 358 : 93 I.C. 694 : 1926 A.I.R. 389 (All.) : 27 Cr. L.J. 470.

Scope.—The provision of s. 62 of the Stamp Act, is self-contained as regards unstamped receipt. *Nemai Charan Sahu v. Emperor*, 64 Ind. Cas. 286. A mere receipt of an unstamped document does not constitute abetment of any offence. A person who executes an unstamped instrument commits an offence and not the person in whose favour it is made. *Emperor v. Rajlingam*, 1 N.L.R. 163.

Writer of an instrument or witness.—Where a person merely engrosses a document which is not stamped but is liable to duty or simply attests, such a person is not liable under this section. *R. v. Jati Satu*, 1 Bom. H.C. Rulings 37 ; *R. v. Jetha Moti*, 2 Bom. H.C. Rulings 129 (135).

Draftsman or witness.—A person who merely drafts an instrument or attests as witness, does not come under this section. *Reference*, 3 M.H.C.R. App. 27.

Holder.—The holder of an insufficiently stamped bond is not liable to prosecution under s. 61 (now s. 62) of the Stamp Act 1879 merely because he holds the instrument, *Empress v. Mural Ali*, 40 P.R. 1880.

Collector should not himself try such cases.—The Collector himself being responsible for the institution of prosecution of offences under Act I of 1879 and Act XVIII of 1869, except when the Local Government generally, or he himself specially, has authorized some other officer to discharge the duty, should not himself try as a Magistrate a person accused of offence against either of those Acts, but should refer the case for hearing and disposal to some other qualified Magistrate. *Empress v. Deoki Nandan Lal*, 2 All. 806 (807).

Collector is to make an enquiry.—"A Collector has power to prosecute in every case coming within the provision of s. 24 (now s. 43) but he is not to do so unless he shall have reason to think that there has been an intent to evade payment of stamp duty. If he does prosecute, the Magistrate is bound, under the terms of s. 29 (s. 62 of the Act of 1899), to record a conviction provided that it is proved that there has been making etc., of an unstamped or insufficiently stamped instrument." "It may be true that the Collector is not bound to offer any evidence of intention, or even to state the reasons which induced him to prosecute ; but the question of intention is, nevertheless, one which the Magistrate is bound to consider, and he must hear the statement of the accused and any evidence which

he may offer in reference to it." *Empress v. Dwarkanath Chowdhury*, 2 Cal. 399 (103). See also *The Queen v. Nadiar Chand Poddar*, 24 W.R. Cr. 1; *Empress v. Deoki Nandan Lall*, 2 All. 806 (807).

The collector is to give an opportunity to the accused to pay.—K. executed on plain paper an instrument which should bear a stamp duty amounting to 4 annas, in favour of J. who sued on it. The Judge called upon J to pay the duty and penalty. The Judge thereafter gave his sanction to prosecute K. under s. 61 (now s. 62) of the Stamp Act of 1879; *held* that the conviction by the trying Magistrate is illegal as the Collector failed to give an opportunity of paying duty and penalty. *Empress v. Janki*, 7 Bom. 82; *Nemai Charan v. Emperor*, 1921 Pat. C.W.N. 173 : 2 P.L.J. 623 : 2 P.L.T. 623 : 64 I.C. 286.

Arbitrator.—Where an Arbitrator signs "otherwise than as a witness," an award directing partition on an unstamped paper, he is liable to prosecution under s. 62 (b) of the Indian Stamp Act, if the instrument is chargeable with duty, *Emperor v. Pattoo Lal and Emperor v. Dhokey Lal*, 73 Ind. Cas. 336 : 1924 A.I.R. 240 (Oudh). Where the accused, an arbitrator in an arbitration proceeding, signed an award in pencil on a plain paper and the parties also signed the award, the accused then directed a writer to fair-copy the award on a stamp paper and one of the parties obtained the draft and filed a suit on it, *held* that although the accused intended the plain paper to be a draft still it became an operative instrument when the draft was signed and the accused was rightly convicted, *Moti Chand v. King Emperor*, 1 Cr. L.R. 354. See also *Ram Kumar v. Kushal Chand Ganesh Das*, 107 I.C. 668 : 1928 A.I.R. 166 (Nag.).

Contra.—The arbitrator is under no obligation to stamp the award. He is only to inform the parties of the making of the award. *Anantram v. Lala Murlidhar*, 78 I.C. 195 : 1924 A.I.R. 204 (Nag.).

Where signature unnecessary.—Where certain parties to an arbitration proceedings, signed the award under the head "Signature of heirs," *held* that the signature by the parties being as "persons" executing or signing otherwise than as a witness, and as the signature by the parties was not necessary to complete the instrument, the act of the parties did not come under s. 62 (1) (b) of the Stamp Act, *Emperor v. Brij Lal Saran*, 32 All. 198 : 7 All. L.J. 180 : 5 Ind. Cas. 180.

Entries in a book.—A debtor borrowed money from time to time and entered the amounts in a paper, which was left in the possession of the creditor; the entries being acknowledgments of the amount borrowed each time should have been stamped with an one anna stamp for sums above Rs. 20. As it was not done, a conviction under s. 62 was upheld by the High Court. *Emperor v. Tulshi Ram*, 35 All. 290 : 11 All. L.J. 309 : 20 Ind. Cas. 216,

Letter.—Where a creditor acknowledged receipt of money exceeding Rs. 20 in satisfaction of a debt in a letter, the letter is a receipt for the money and should have been stamped; the writer of the letter is therefore liable to be punished under s. 61 (now s. 62) of Act I of

1879 and not under s. 64 (now s. 65) of that Act. *Reference under Stamp Act*; s. 46, 8 Mad. 11 F.B. See also *Queen Empress v. Multirulandi*, 11 Mad. 329.

Dishonest intention must be proved.—The Magistrate is bound to consider the question whether a person prosecuted under s. 29 (now s. 62) of the Stamp Act XVIII of 1869, had an intention to defraud the Government by using a stamp of less value than that required by law. *Empress v. Dwarka Nath Chowdhury*, 2 Cal. 299 (403). See also *Empress v. Soddanund Mohanty*, 8 Cal. 259 (261); *Empress v. Janki*, 7 Bom. 82. To support a conviction under s. 62 of the Stamp Act, proof of dishonest intention in the payment of stamp duty is essential. *Kanhayilal v. Emperor*, 54 I.C. 406 : 21 Cr. L.J. 54; *Nemai Charan v. Emperor*, 2 P.L.J. 623 : 2 P.L.T. 623 : 1921 Pat. C.W.N. 173.

The gist of an offence under s. 62 of the Indian Stamp Act is the dishonest intention. A magistrate cannot find that dishonest intention was absent and at the same time warn the accused not to do the act in future. The provision of s. 562 of the Code of Criminal Procedure does not apply to the Indian Stamp Act, 1899, *Emperor v. Ishwar Dayal Pandey*, 25 A.L.J. 401 : 100 I.C. 598 : 1927 A.I.R. 238 (All.) : 26 Cr. L.J. 166.

Contra.—The intention to evade payment is not an essential ingredient of the offence described in s. 29 (now s. 62) of Act XVIII of 1869—*Proceedings*, 28th November, 1870—6 M.H.C. Rulings. See also *Emperor v. Panna Lal*, 24 All. L.J. 358 : 93 I.C. 694 : 1926 A.I.R. 339 (All.) *infra*; *Queen-Empress v. Venkatarayudu*, 12 Mad. 231 (233).

Offence.—It is an offence under this section to grant a receipt which does not bear proper stamp in a payment out of Court to satisfy a rent decree. *Emperor v. Dugar Singh*, 31 All. 36 : 5 All. L.J. 747 : (1908) All. W.N. 272. See *Queen Empress v. Debendra Krishna Miller*, 27 Cal. 587 : 4 C.W.N. 524, where a mortgage deed was stamped as a promissory note.

Under s. 62 (1) paragraph (b) a person who signs a document which is chargeable with duty without the same being duly stamped, is liable to be prosecuted for an offence under that section, *Chhikmal Chopra v. Emperor*, 44 Cal. 321 (326) : 21 C.W.N. 248 : 24 C.L.J. 441 : 36 I.C. 146.

Absence of dishonest intention to defraud is not necessary. A mere signature, otherwise than as a witness, of an instrument chargeable with duty without the same being duly stamped is an offence, *Emperor v. Panna Lal*, 24 All. L.J. 358 : 93 I.C. 694 : 1926 A.I.R. 389 (All.).

Abetment.—Where the creditor accepted a payment towards the satisfaction of the debt but having no stamp was unable to grant a stamped receipt, and the debtor agreed to have it stamped at his own expense, held that the creditor is not guilty of abetment of an offence, of granting an unstamped receipt, *Queen Empress v. Mittu Lal*, 8 All. 18; *Empress v. Gopal Das*, (1883) 3 All. W.N. 145; *Empress v.*

Bhairon, (1884) 4 All. W.N. 37; *Empress v. Bahadur Singh*, (1885) 5 All. W.N. 30; *Queen Empress v. Nihal Chand*, 20 All. 440.

Mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument, *Empress v. Janki*, 7 Bom. 82; *Emperor v. Rajlingam*, 1 N.L.R. 163.

Not offence.—*Instrument made out of British India.*—Receiving a promissory note executed out of British India and putting the same in suit in ignorance of the law of British India, does not constitute an offence under s. 61 (s. 62) of Act I of 1879, *The Queen v. Gulam Hussain*, 7 Mad. 71. See also *Queen Empress v. Nihal Chand*, 20 All. 440; (1898) 18 All. W.N. 108, where the note was made in British India.

Instrument made in India.—*The instrument must be chargeable with stamp duty.*—A memorandum given by one servant to a co-servant from whom he received money under order of his master is not a receipt and need not be stamped; hence no order for conviction can be passed under s. 62 (b) of the Stamp Act, *Shauli Lal v. Emperor*, 4 O.L.J. 490; 42 Ind. Cas. 328.

If the instrument does not require a stamp a conviction under s. 62 (b) cannot be sustained, *Musst. Sundar Koer v. Emperor*, 20 C.W.N. 923; 1 Pat. L.J. 366; 3 Pat. L.W. 72; 36 Ind. Cas. 175, nor if the stamp affixed is of improper description, *Emperor v. Ram Saran Lal*, 40 All. 19; 15 All. L.J. 846; 42 I.C. 1008.

A, applied to a Bank for a loan of Rs. 50. The application was made in prescribed form which contains columns intended to show the signature of the person recommending the loan or undertaking any responsibility on behalf of the applicant. One S recommended that he should be granted the loan on a bond and added the words “*ami adai karia diba*” or “I will see that the payment is made.” The applicant to the High Court who was manager of the Bank approved the proposal but granted the loan at a monthly interest of Rs. 2-11 annas and signed his name. The Magistrate in convicting the Manager held that the words “I will see that the payment is made or I guarantee payment” represent a completely executed security bond and by signing the Manager accepted the security bond, held by the High Court that the statements in the proposal made by the applicant himself and the Manager do not represent a completed agreement as neither the surety nor the applicant said anything regarding interest and there is nothing in the form to show that the borrower or the surety agreed to the proposed rate, *Rajeswar Bagchi v. Emperor*, 21 C.W.N. 758; 40 Ind. Cas. 725.

Where a theft was committed in the house of the applicant and afterwards the thief was caught and the amount recovered from the thief, the Tahasildar ordered the money so recovered to be returned to the applicant who executed a receipt for it but did not affix any stamp, whereupon the applicant was prosecuted under s. 62 cl. (b) of this Act; held, that as the applicant received back his own money it was a payment without consideration and is exempt from stamp duty under Art. 53 (b) of the Schedule, *Kanhailal v. Emperor*, 46 All. 354; 22 All. L.J. 238; 81 I.C. 720; 1924 A.I.R. 578 (All.).

Where the sole surviving partner of a firm was prosecuted under this section for an unstamped receipt purporting to have been granted by a gomasta of the firm, *held* that the fact that the unstamped receipt was granted by the gomasta of the firm does not connect the master of the firm with the granting of the unstamped receipt or any violation of the provisions of the Stamp Act, and there was nothing to show that the accused was present at the time the receipt was granted or that he authorized the gomasta to grant the receipt in the form it was granted without any stamp, hence the accused cannot be convicted, *Golan Hossain Ariff v. The Emperor*, 8 C.W.N. 376 (380).

S. 62 (2).—This sub-section is s. 35 of the Companies Act (Act VI of 1882), but the word "fine" is here substituted for the word "forfeit" in that Act.

Where 9 share warrants, not duly stamped, were issued *held* that such issue is an offence under this section. *Queen Empress v. Moore*, 20 Cal. 696.

63. Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

NOTES.

See s. 62 of Act I of 1879, s. 31 last paragraph, s. 33 second paragraph of Act XVIII of 1869. The cancellation should be made in the manner prescribed by s. 12.

Must be cancelled.—For non-cancellation of a receipt stamp affixed, an accused can be convicted under s. 63 of the Stamp Act, *Emperor v. Tulsi Ram*, 35 All. 290 : 11 All. L.J. 309 : 20 Ind. Cas. 216.

Where a Government servant sent his salary bill for payment affixing the proper stamp but without cancelling the same, *held* that an offence under this section has been committed, *Queen Empress v. Rahat Ali Khan*, 9 All. 210.

Where a firm sent a bill for more than Rs. 20 and the words "received payment" were printed at the foot of the bill and the signature of the firm made beneath those words, *held* that it is a "receipt" and the bill should be stamped and the stamp cancelled, *In the matter of Reference by the Financial Commissioner Burma*, 1 L.B.R. 282 (1906).

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth ; or,
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or
- (c) does any other act calculated to deprive the Government of any duty or penalty under this Act ;

shall be punishable with fine which may extend to five thousand rupees.

NOTES.

See s. 63 of Act I of 1879 and Ss. 34 (c) and 35 of Act XVIII of 1869. Clause (c) is new.

This section makes it an offence not to truly and fully set forth the particulars required by s. 27 and persons who execute or take any part in the preparation of the instrument are made liable to punishment. The intention to defraud must be present in the mind of the person. Clause (c) covers cases outside clauses (a) and (b) but has been held to mean acts of a like nature, *Chhakmal Chopra v. Emperor*, 44 Cal. 321.

Any person.—A person in whose favour a document is executed is not affected by s. 64 (a) of the Indian Stamp Act as s. 64 (a) is directed against a person executing the instrument. *Panchaman Roy v. Emperor*, 1929 A.I.R. 723 (Cal.) : 1929 Cr. C. 359.

Any other act calculated to deprive Government of duty.—An entry made by a debtor in the book of the creditor that a payment was made by him, is not an act calculated to deprive the Government of any duty under the Act, *Emperor v. Kallu Mal*, (1903) 23 All. W.N. 173.

Scope.—An intention to defraud is an essential ingredient of the offence made punishable by s. 63 (now s. 64) of Act I of 1879 and prosecution cannot be made without previous sanction of the Magistrate, *Queen Empress v. Venkatrayadu*, 12 Mad. 231 (234).

With intent to defraud Government.—*Omission to stamp a document.*—Mere non-payment of proper stamp duty without an intention to defraud Government, does not make a person liable to prosecution under s. 64 of the Stamp Act. *Brojendra Nath Bakshi v. Emperor*, 45 I.C. 275.

A person who has failed to pay the proper stamp duty for a document can be convicted under s. 64 of the Indian Stamp Act only where there is clear evidence to show that he had the intention of evading payment of the proper stamp duty or that the document was executed in that way to defraud government, *Rang Lal Sahu v. Emperor*, 108 I.C. 427 : 29 Cr. L.J. 397.

Evasion.—Where a purchaser of property at a private sale from M and S reconveyed the property to the original proprietors M and S but without fully and truly setting forth all the facts and circumstances as required by s. 27 of the Stamp Act, held that R has committed an offence under s. 64 (a) of the Stamp Act by evading the obligation that lay upon the party as he has defrauded the Government of stamp duty. *Emperor v. Rameshar Das*, 32 All. 171 : 7 All. L.J. 110 : 5 Ind. Cas. 697.

Where the accused lent money to one Mahomed Barkandaz and one Lal Mahomed signed an undertaking in one of the books of the accused to the following effect : “I shall pay interest on this *hath-chitta* up to date of realization at the rate of Rs. 3 per cent. per mensem.” Sd : Sri Lal Mahomed. The document was stamped with a stamp of one anna. The accused then sued Lal Mahomed for money due on the *hathchitta* and an objection was taken that the document is not properly stamped ; the result was that the accused had to pay the proper stamp plus a penalty of Rs. 5. The matter afterwards came to the notice of the Collector who directed prosecution of the accused under s. 64 (c) of the Stamp Act. The High Court held, on a petition by the accused, that the words “*any other Act*” in s. 64 (c) is to be taken as meaning an act of a like nature to those specified in (a) and (b) and the mere fact that a person puts a stamp on a document which he knows is not of proper value, would not come within clause (c) of s. 64, *Chhakmal Chopra v. Emperor*, 44 Cal. 321 : 24 C.L.J. 441 : 21 C.W.N. 248 : 36 Ind. Cas. 146. See also *Queen Empress v. Somasundaram Chetti*, 23 Mad. 155. See also other cases under s. 3—*supra*.

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

65. Any person who—

- (a) being required under section 30 to give a receipt, refuses or neglects to give the same ; or,
- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount of value not exceeding twenty rupees, or separates or divides the money or property paid or delivered ;

shall be punishable with fine which may extend to one hundred rupees. ^c

NOTES.

See s. 64 of Act I of 1879 and s. 27 (h) of Act XVIII of 1869.

To constitute an offence under this section there must be (a) refusal to grant a receipt, in which refusal an intention to defraud the Government need not be present and (b) the party with intent to defraud the Government instead of granting one receipt for an amount exceeding Rs. 20, grants several receipts each not exceeding Rs. 20 to avoid payment of duty.

Constructions.—S. 64 (now s. 65) of the Stamp Act of 1879 is a special provision and does not interfere with the general provisions of s. 61 (now s. 62) of the Stamp Act of 1879. *Reference under Stamp Act*, 8 Mad. 11 F.B.

An intimation to a Court by a witness signing a document that he has received his diet money from the Court, is not a receipt as it is an acknowledgment to a third party and not an acknowledgment in favour of the party making the payment, *Emperor v. Thakur Mahipal Singh*, 140 I.C. 192 (Oudh).

Sec. 65 (a) only applies if the creditor receives payment in money exceeding Rs. 20/- in value. It cannot apply if the debtor delivers immovable property of the value exceeding Rs. 20/-, *Emperor v. Sukhdeo*, 140 I.C. 397 (Nagpore).

Facts to be proved.—To bring home a charge under s. 64 (now s. 65) of Act I of 1879 it must be proved that the accused had been required to give a duly stamped receipt under s. 58 (now s. 30) of Act I of 1879 and had refused it.

Therefore, when a firm granted an unstamped receipt for money received on their behalf and signed by their agent, the members of the firm were held liable under ss. 61 and 64 of Act of 1879, since they were, in contemplation of law, the persons who signed an unstamped receipt, and refused to give a stamped receipt, and it was not necessary that the members should be present at the time of writing the receipt or must have been aware of the fact of grant of such a receipt. *Empress v. Khettar Mohun Chowdhury*, 27 Cal. 324 (332) : 4 C.W.N. 440.

Money sent through Post office.—When the post office is the agent, then a separate stamped receipt need not be given to the sender when the amount exceeds Rs. 20—in addition to a regular postal receipt. Generally when a man receives money from an agent and has given a valid receipt to that agent, he need not again give another receipt to the principal, *Empress v. Balmakund*, 34 All. 192 : 9 All. L.J. 97 : 13 I.C. 778. See also Notification under s. 9 of this Act by Govt. of India dated 31-1-31 (now ss. 41 and 41A).

Acknowledgment in a letter not stamped.—An acknowledgment of receipt of a sum above Rs. 20 in a letter which does not bear

a stamp, by the person who acknowledges, is liable to punishment under s. 61 (now s. 62) and not under s. 64 (now s. 65) of the Stamp Act. *Reference under Stamp Act*, 8 Mad. 11 F.B; *Reference under Stamp Act*, 8 Mad. 81; *Queen Empress v. Nyltirulandi*, 11 Mad. 329.

Sanction by Collector necessary.—The Collector's sanction under s. 70 must be obtained before a Magistrate can have jurisdiction to try an offence under s. 65 and if there be a conviction without such sanction it is bad in law, *Crown v. Ramji Lal*, 21 P.R. Cr. 1915 : 38 P.W.R. (cr.) 1915 : 31 I.C. 643.

A sanction by Collector must be obtained before a prosecution can be started under s. 64 (now s. 65) of Act I of 1879, *Empress v. Jethmal*, 9 Bom. 27.

Penalty for not making out policy or making one not duly stamped.

66. Any person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

(b) makes, executes or delivers out any policy which is not duly stamped or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy;

shall be punishable with fine which may extend to two hundred rupees.

NOTES.

See s. 65 of Act I of 1879.

Construction.—S. 65 (now s. 66) of Act I of 1879 creates special offences in respect of insurance policies, and its provisions do not interfere with the general provisions of s. 61 (now s. 62) of the Stamp Act of 1879, *Reference under Stamp Act*, 8 Mad. 11 F.B.

67. Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more,

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

NOTES.

See s. 66 of Act I of 1879, and s. 32 of Act XVIII of 1869.

Amendments.—In this section, after the words “bill of exchange” the words “payable otherwise than on demand” have been inserted by Act V of 1927, sec. 5 (8).

Scope.—The provisions of s. 66 (now s. 67) of Act I of 1879 creates special offences and do not interfere with the general provisions of s. 61 (now s. 62) of the Stamp Act of 1879. *Reference under Stamp Act, s. 46, 8 Mad. 11 F.B.*

A second of a bill of exchange, payable on demand, does not require to be stamped with a stamp of one anna, when the 1st of that bill of exchange has been stamped with a stamp of one anna, *In re The Netherlands Trading Society, 4 L.B.R. 320 F.B.*

Penalty for post-dating bills, and for other devices to defraud the revenue.

68. Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made ; or,

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ; or

(c) with the like intent practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force ;

shall be punishable with fine which may extend to one thousand rupees.

NOTES.

See s. 67 of Act I of 1879. The acts must be done with an intent to defraud.

Application.—This section is not applicable unless there is an intention to defraud, which is an essential element, *Ramen Chetty v. Mahomed Ghous*, 16 Cal. 432; *Ram Prosad v. Srinivas*, 90 I.C. 685 : 27 Bom. L.R. 1127; 1925 A.I.R. 527 (Bom.).

A made an application to a bank for a loan of Rs. 50 in the form prescribed in the bank. One of the columns in the form required a signature of the person recommending the loan. S, in recommending the loan added the words "I guarantee the loan." The Manager of the bank decided that a loan of Rs. 50 carrying interest at the rate of Rs. 2-11 annas monthly should be granted to the applicant. Thereupon A executed the bond but S did not join. A suit was brought against A, and S was impleaded as surety. The matter then came to the notice of the authorities and a prosecution was started and the secretary of the bank was convicted. It was held by the High Court, that the intention to defraud Government could not be imputed to the secretary who did not accept the proposal, his duties being purely ministerial and had the surety also joined in it no additional stamp duty would have been required. *Nepal Chandra Das v. Emperor*, 21 C.W.N. 758 (761) : 40 Ind. Cas. 725.

Apparent evasion of stamp law.—Where the party is within the letter of law and there is only an apparent evasion, the party cannot be proceeded against, *Reference under Stamp Law*, 5 P.R. 1886 (S. C.C.C.).

Construction.—The first clause of s. 67 (now s. 68) of Act I of 1879 does not control the second clause to that section so as to restrict its operation to negotiable instruments only, *Reference under Stamp Act*, s. 46, 9 Mad. 138 F.B.

Cl. (c).—The execution of a document which on its face requires to be, and is not, stamped cannot be said to be "*an act, contrivance or device not specially provided for by this Act or any other law for the time being in force.*" There can be no device or contrivance if the document is what on its face it purports to be, *Queen Empress v. Somasundaram Chetty*, 23 Mad. 155. This clause apparently covers cases for which no provision is made for punishment in this Act.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74; and

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

(b) any person not so appointed who sells or offers for sale any stamp other than [two annas—in Bombay] an one anna or half an anna adhesive stamp;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES.

See s. 68 of Act I of 1879, and s. 48 of Act XVIII of 1869.

Amendment.—The words “or half an anna” were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

Construction.—The words “sells or offers for sale” which occur in s. 69 of the Stamp Act include the case of a thief who exchanges a stolen stamp for a sum of money, as he is not the person who is authorized to sell stamps, *Queen-Empress v. Virasami*, 24 Mad. 319.

Purchasing under a false name. A purchase of stamp under a false name is not an offence, *Empress v. Nek*, (1884) 4 All. W. N. 87.

Sale of court-fee stamp.—S. 68 (Now s. 69) of Act I of 1879 has no reference to the sale of court-fee stamps and such sale by an unauthorized person does not constitute an offence under this section, *Empress v. Jallu*, 4 All. 216 : (1882) 2 All. W.N. 23.

Effect of entries made at the request of the vendor.—An admission by a person other than the licensed vendor that he made the endorsement on the stamp paper and made entries in register at the request of the licensed vendor is not sufficient evidence to hold that such person abetted the breach of Rule 11 framed under s. 74 of the Indian Stamp Act read with s. 107 of the Indian Penal Code, *Menumal Vishandas v. Emperor*, 118 I.C. 206 : 1929 A.I.R. 118 (Sind.) : 30 Cr. L.J. 681 : 1929 Cr. C. 104.

70. (1) No prosecution in respect of any offence punishable under this Act or any Institution and conduct of prosecutions. Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorises in that behalf.

(2) The Chief Controlling Revenue-Authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

NOTES.

See s. 69 of Act I of 1879, and s. 43 of Act XVIII of 1869.

In the North-West Frontier Province, for "Chief Controlling Revenue-authority" read "Revenue Commissioner"—see s. (1) (d) of the North-West Frontier Province Law and Justice Regulation 1901 (7 of 1901).—Punjab and North-West Code.

Proceedings by private individual.—A private individual cannot start criminal proceedings in respect of offences against the Stamp Law. *Ramjiwan Marwadi v. Lachimi*, 104 I.C. 108 : 28 Cr. L.J. 780 : 1927 A.I.R. 202 (Nag.)

Party must be allowed opportunity to pay.—A party must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under s. 69 (now s. 70) of Act I of 1879, *Empress v. Janki*, 7 Bom. 82.

Sanction of Collector.—The Collector is the actual prosecutor of the case, *Empress v. Deoki Nandan Lal*, 2 All. 806. See *Queen v. Nadiar Chand Poddar*, 24 W.R. Cr. 1. Previous sanction of the Collector under s. 69 (now s. 70) of the Stamp Act of 1879 must be obtained before prosecution for an offence can be instituted *Queen Empress v. Jethmal Jayraj*, 9 Bom. 27; *Crown v. Ramjilal* 21 P.R. Cr. 1915 : 38 P.W.R. 1915 : 31 Ind. Cas. 643.

Subsequent sanction by Collector.—A sanction by Collector subsequent to the institution of proceedings does not validate institution of proceedings, nor is the defect cured under s. 537 of the Code of Criminal Procedure, *Ramjiwan Marwadi v. Lachimi*, 104 I.C. 108 : 28 Cr. L.J. 780 : 1927 A.I.R. 202 (Nagore).

Notice to issue.—The person against whom the sanction is sought should be served with notice to show cause and opportunity given for being heard in his defence, *Abhilakh Singh v. Khub Lal*, 10 Cal. 1100.

Want of sanction is not a technical objection.—The absence of sanction is not a technical objection and the irregularity vitiates the proceedings, rendering it liable to be cancelled, *Empress v. Deo Sahai*, 3 All. W.N. 98; *Queen v. Ajodhya Pershad*, 2 N.W.P. 188.

Procedure.—Where a sanction to prosecute has been granted under s. 43 (now s. 70) of the Stamp Act of 1869, the Collector is not competent to try that person himself as a Magistrate, but must appoint some other Magistrate to try the case, *Empress v. Gangadhar Bhunjo*, 3 Cal. 622 : 2 C.L.R. 179; *Queen v. Nadir Chand Poddar*, 24 W. R. Cr. 1.; *Empress v. Deoki Nandan Lal*, 2 All. 806.

71. No Magistrate other than a Presidency Magistrate or a Magistrate whose Jurisdiction of Magistrates. powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

NOTES.

See s. 70 of Act I of 1879, and s. 44 of Act XVIII of 1869.

72. Every such offence committed in respect of any instrument may be tried in Place of trial. any district or presidency town in which such instrument is found as well as in any district or presidency town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

NOTES.

See s. 71 of Act I of 1879.

Matters to be specified in the judgment.—The instrument in respect of which penalty is inflicted, the reasons why the accused is liable to the penalty inflicted and the amount of stamp duty to be paid, should be clearly stated in the judgment, *Queen v. Nadiar Chand Poddar*, 24 W.R. Cr. 1.

"Might be tried under the Code of Criminal Procedure."

See ss. 177 to 189 of the present Code of Criminal Procedure. See also s. 348 of the same Code for persons who are again accused of the same offence.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. Every public officer having in his custody Books, etc., to be any registers, books, records, open to inspection. papers, documents or proceedings, the inspection whereof may tend

to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

NOTES.

This section is new.

Public Officer—has been defined in the Evidence Act, s. 74, and in the Penal Code, S. 2.

•. 74. The Local Government, subject to the control of the Governor-General in Council, may make rules for regulating—
Powers to make rules relating to sale of stamps.

(a) the supply and sale of stamps and stamped papers,

(b) the persons by whom alone such sale is to be conducted, and

(c) the duties and remuneration of such persons :

Provided that such rules shall not restrict the sale of [*two annas*—in Bombay] one-anna or half an anna adhesive stamps.

NOTES.

See s. 55 of Act I of 1879, and s. 48 of Act XVIII of 1869.

Rules.—For the rules made by Local Government, see the Local Rules and Orders of Assam, Bengal, Bihar and Orissa, Bombay, Burma, Central Provinces, Coorg, Madras, Punjab and the United Provinces.

Amendment.—The words “or half an anna” in the proviso to clause (c) were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (5 of 1906).

For Bombay only.—Before the words “one anna” in the proviso the words “two annas” shall be inserted. (See Bombay Act 2 of 1922).

75. The Governor-General in Council may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

NOTES.

See s. 56 of Act I of 1879.

For rules made under this section in conjunction with s. 10, see the General Statutory Rules and Orders.

“The imposition of excessive and minute details would be pitfalls to the unwary and would, by frequently invalidating documents press harshly upon illiterate classes and overthrow thousands of honest transactions without producing any such advantageous result, in the form of revenue to the state, as would compensate it for the discontent which would be occasioned. The Legislature has avoided such stringent details and it seems to us to have satisfied itself by legislating against defacement of the impressed stamp, and against such mode of penning the document as would admit of the stamp being used for or applied to any other instrument.” *Dowlatram Harji v. Vilho Radhoji*, 5 Bom. 188 F.B.

Rule requiring party to a deed to use plain paper when the space on the face bearing the stamp is not sufficient, is an enabling rule and does not prevent writing on the reverse side, *Reference under Stamp Act*, s. 46, 7 Mad. 176.

Rules ultra vires.—In the case of *Radha Bai v. Nathu Ram*, 13 All. 66 and *Reference under Stamp Act*, s. 46, 8 Mad. 523 it was held that rules “not consistent with the Act” are *ultra vires*. These words occurred in the old section but these words were omitted from the Act II of 1889, therefore it may be inferred that the intention is to make rules “not consistent with the act” as rules made within the authority conferred.

Government Resolutions.—Government Resolutions and opinions of the Legal Remembrancer are not rules and the Courts are not bound to follow them, *Govind Babaji v. Naiku Jati*, 10 Bom. 78; *Nana Bayaji v. Pandurang*, 9 Bom. 97.

76. (1) All rules made under this Act, other than rules made under section 74, shall be published in the Gazette

Publication of rules.

of India, and all rules made under section 74 shall be published in the local Gazette.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

NOTES.

See second paragraph of s. 57 of Act I of 1879, and second paragraph of s. 48 of Act XVIII of 1869.

By s. 57 (now s. 76) of Act I of 1869, rules, if made by the Governor General in Council, have the force of law, *Radha Bai v. Nathu Ram*, 13 All. 66 (72, 75).

76A. The Local Government may, by notification in the local official Gazette, delegate—
Delegation of certain powers.

(a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority ; and

(b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1), and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

NOTES.

Amendments.—This section was inserted by Pt. I of the Schedule to the Decentralization Act, 1914 (4 of 1914).

In the North-West Frontier Provinces, for "Chief Controlling Revenue-authority" read "Revenue Commissioner"—see s. 6 (1) (d) of the North-West Frontier Province Law and Justice Regulation 1901 (7 of 1901)—Punjab and North-West Code.

77. [Except for the provisions as to copies contained in section 6-A—in Bengal, Assam, Punjab, and U. P.] Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court fees.

NOTES.

See s. 59 of Act I of 1879, and s. 17 of Act XVIII of 1869.

Local Amendments.—(*In Bengal, Assam, Punjab and U. P.*).—
At the beginning of s. 77 the following words shall be inserted,
namely, "Except for the provisions as to copies contained in section
6-A."

78. Every Local Government shall make provision
Act to be translated for the sale of translations of
and sold cheaply. this Act in the principal vernacular
languages of the territories administered by it at a
price not exceeding four annas per copy.

NOTES.

See s. 60 of Act I of 1879 and s. 51 of Act XVIII of 1869.

79. *Repealed by Act 10 of 1914.*

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 3.)

General.—The Schedule attached to the Stamp Act must be treated as exhaustive, *Musst. Sunder Kuer v. Emperor*, 20 C.W.N. 923 (925) : 1 Pat. L.J. 366 : 3 Pat. L.W. 72 : 36 I.C. 175.

In determining the question whether a particular instrument is sufficiently stamped, the Court should only look at the instrument as it stands. A defect, if any, in the Stamp Act cannot be cured by construing a document to be other than what it is or purports to be, *Sakharam Shember v. Ramchandra*, 27 Bom. 279 : 5 Bom. L.R. 28 ; *Raman Chetty v. Mohamed Ghosue*, 14 W.R. 38 (O.C.) : 515 P.R. 103.

Description of Instrument.	Proper Stamp-duty.
1. Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	One anna.

NOTES.

See Art. 1 Sch. 1 of Act I of 1879, and Art. 5 Sch. II of Act XVIII of 1864.

Elements.—The necessary elements are :—

- (i) The debt is to exceed Rs. 20 in amount or value ;
- (ii) The acknowledgment is to be signed by or on behalf of debtor ;
- (iii) The acknowledgment should be intended to supply evidence in any book etc.

(iv) The book to be left in the possession of the creditor; and lastly.

(v) The acknowledgment must *not* contain a promise to pay the debt, or to pay interest, or to deliver any goods or other property.

The proviso was first introduced in this Act.

See *Emperor v. Bansidhar*, (1884) 4 All. W.N. 164.

Stamp to be used.—Adhesive stamp (s. 11) may be for postage or both for postage or revenue (rule 16) or coloured impression (rule 8), foreign instrument (rule 12).

Construction.—Sch. I, Art. 1 is to be construed strictly, *Sitaram v. Thakurdas*, 50 Ind. Cas. 781.

For the instrument to require a stamp under Art. 1 Sch. 1 of the Indian Stamp Act, 1899, all the conditions indicated in the article must be present, *Galstaun v. Hutchison*, 39 Cal. 789 : 16 C.W.N. 945 : 15 I.C. 979 ; *Ambika Dat Byas v. Nityanund Singh*, 30 Cal. 687 ; *Chumilal v. Manishankar*, 18 Bom. 616.

Whether a document comes under Article 1 of Schedule I of the Stamp Act is a question which depends in each case on the intention of the writer, *Arjan Das as Manager of Hindu joint family etc. v. Ram Lakhaya and Melaram etc.*, 1925 A.I.R. 119 (Lahore) : 85 I.C. 290.

The Judicial Committee in the case of *Maniram Seth v. Seth Rup Chand*, 33 I.A. 164 : 33 Cal. 1047 : 3 A.L.J. 325 : 8 Bom. L.R. 501 : 4 C.L.J. 94 : 10 C.W.N. 874 : 16 M.L.J. 300 : 2 N.L.R. 130 laid down that "an acknowledgment to take the case out of the Statute of Limitation, must be either one from which an absolute promise to pay can be inferred, or, secondly, an unconditional promise to pay the specific debt, or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed. An unconditional acknowledgment has always been held to imply a promise to pay, because it is the natural inference, if nothing is said to the contrary." There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the account settled, and no qualification of the natural inference that, whoever is the creditor shall be paid, when the condition is performed by the ascertainment of a balance in favour of the claimant."

Acknowledgment—what is.—In determining the question whether a document is an acknowledgment or not, the court is to consider the intention of the parties and consider the document and the surrounding circumstances, *i.e.*, whether it was a bare acknowledgment and a promise to pay to be used in evidence against the maker or whether it was given for some other purpose, *Surjimull Murlidhur Chandick v. Anant Lal Damani*, 46 Mad. 948 : 74 Ind. Cas. 1029 : 45 M.L.J. 399 : 1924 A.I.R. 352 (Mad.) : (1923) M.W.N. 883 : 18 L.W. 485.

A document may be an acknowledgment of a debt within s. 19 of the Limitation Act but that alone would not make it an acknowledg-

ment within Sch. I, Art. 1 of the Stamp Act. There are other conditions to be fulfilled, one of which is, that it should be written on behalf of the debtor and signed by him in order to supply evidence of a debt; therefore the question of intention is material, *Ambica Dat Vyas v. Nityanund Singh*, 30 Cal. 687; *Binja Ram v. Rajmohan Dey*, 8 Cal. 282.

Where an amount is found due on adjustment of account between the parties at a certain date and signed by the defendant, *held* that this is an acknowledgment and is to be stamped as such, *Sitaram v. Rama Prosad Ram*, 18 C.W.N. 697 (699) : 22 Ind. Cas. 858 : 19 C.L.J. 17. *Contra* see *Galstaum v. Hutchison*, 39 Cal. 789 : 16 C.W.N. 945 : 15 I.C. 979.

An account stated, signed by the debtor, is merely an acknowledgment in writing of the debt still existing as found due when such account was stated, *Hargopal v. Abdul*, 9 Bom. H.C.R. 429.

A *khata* containing a settled account but containing no promise to pay, is an acknowledgment and is to be stamped as such. *Chowksi Himut Lal v. Chowksi Ashmat Lal*, 8 Bom. 194; *Nanhibai v. Nathubhan*, 7 Bom. 417; *Mulji v. Linga Makaji*, 21 Bom. 201; *Reference under Stamp Act*, 1884 P.J. 13.

An instrument addressed to the defendant and after mentioning certain debits and credits concluded with the statement that a sum of Rs. 6,001 was due to the plaintiff from the defendant and was signed by the defendant, *held* that the instrument is an acknowledgment and is inadmissible in evidence without a stamp under Art. 1, Schedule I of the Stamp Act, *Ramdas v. Inayatullah*, 45 All. 374 : 21 All. L.J. 263 : 71 I.C. 1027 : 1923 A.I.R. 297 (All.). See also *Ramaswami Iyengar v. T. Raghava Iyengar*, 1926 M.W.N. 118 : 24 L.W. 82 : 92 I.C. 1046; *N. M. R. Nagappa Chetty and others v. V. A. A. R. Firm*, 49 M.L.J. 306; *V. Ramaswami Aiyar v. Gnanamani Nachiar*, 31 M.L.J. 851.

Whether a particular document fulfils all the requirements of an acknowledgment or not is a question of fact depending upon the circumstances of each case. *Dhaurajmal Kishindas v. Samoansing Sobhasing and another*, 24 S. L. R. 372 : 121 I. C. 873 : 1930 A. I. R. 189 (Sind.).

Part-payment.—A document to the following effect :—"Out of Rs. 22-3-0 due to Shaik Banda Husain by my late brother Ahmed, I have paid Re. 1, the balance will be paid by instalments" was held to be an acknowledgment and is to be stamped as such, *Banda Husain v. Yawar Husain*, (1893), All. W.N. 127.

Unstamped acknowledgment.—Although an unstamped acknowledgment cannot be used in evidence still the same can be admitted for a collateral purpose. *Fatechand Harchand v. Kisan*, 18 Bom. 614.

Entry in account books.—Where a debtor made an entry in the *khata* book of the creditor of having received the amount expressed therein to which the writer of the *khata* attached his signature, *held*

that the entry in the khata book is an acknowledgment and not a bond, there being nothing to show that the writer signed as an attesting witness, *Dulabh Vekmal v. Rehman Jamal*, 14 Bom. 511; *Binja Ram v. Raj Mohan Ray*, 8 Cal. 282; *Mulji Lal v. Linga Makaji*, 21 Bom. 201.

An entry in a creditor's account book and containing an acknowledgment with the words "at a premium of one anna and six pies above the two months' *tavanai interest*" is more than an acknowledgment with a stipulation to pay interest and the document is really a memorandum of an agreement. *In re K. M. K. R. Kumarappa Chetty*, 4 L.B.R. 330; 14 Bur. L.R. 287 F.B.

Sarkhats.—A sarkhat is an acknowledgment as well as agreement, as interest was payable, and therefore a stamp of eight annas is necessary as an agreement, *Mahadeo Koeri v. Sheoraj Ram Teli*, 41 All. 169; 17 All. L.J. 19; 52 Ind. Cas. 974. See also *Dulha Kumbhar v. Mahadeo Prosad*, 28 All. 436 *supra*. See also *In the matter of Shiam Sundar Lal, Shankar Lal*, 50 All. 504; 26 All. L.J. 277; 118 I.C. 173; 1928 A.I.R. 162 (All.); *Dharamsala Lala Rebi Ram v. Lachhman Prasad*, 23 A.L.J. 900.

Hatchittas.—See cases under s. (5) *supra*. When these are mere acknowledgments of debts then the instruments need only be stamped under this Article, *Koonjo Mohun Das v. Krishna Chandra Saha*, 25 W.R. 361; *Brojendra Kumar v. Brohmomoyi Chaudhurani*, 4 Cal. 885; 3 C.L.R. 520; *Sadasook Agarwala v. Baikanta Nath*, 31 Cal. 1043.

Balance Sheet.—In an account between the parties headed "account current" kept by the plaintiff, the defendant was debited with advances made by the plaintiff together with interest on sums due from time to time and credited with payments made by defendants from time to time and the balances were carried forward half yearly. The account being adjusted and stated, a certain sum was found due E. & O. E. by the defendant. The plaintiff appended the words "I accept this correct" and the defendant subscribed his signature thereto. The account was continued, the said sum being carried forward and further sums were debited to the defendant, held in the circumstances of the case that the instrument was not an acknowledgment of debt within the meaning of Art. 1, Sch. I of the Stamp Act, 1899 and was admissible in evidence without being stamped. *Galstaun v. Hutchison*, 39 Cal. 789; 16 C.W.N. 945; 15 I.C. 979; *Nund Kumar Shah v. Shurnomoyi*, 15 Cal. 162; *Brojo Govind Shaha v. Goluck Chunder Shaha*, 9 Cal. 127; *Brojendra Coomar v. Bromomoye Chowdhurani*, 4 Cal. 885; 3 C.L.R. 520; *Surjimull Murlidhar Chandick v. Ananta Lal Damani*, 46 Mad. 948; 45 M.L.J. 399; 1923 M.W.N. 833; 74 I.C. 1029; 1924 A.I.R. 352 (Mad.).

Adjustment of account due on a bond.—An adjustment of account is not admissible in evidence unless stamped, although the adjustment may appear on the back of the bond. *Tariney Churan v. Abdur Rohaman*, 3 C.L.R. 346; *Suraj Prasad Pandey v. W. W. Boncke*, 5 P.L.J. 571; 1 P.L.T. 190; 56 I.C. 379.

An acknowledgment cannot be the basis of a new contract.

—A mere acknowledgment cannot be the basis of a new contract. *Gunga Prasad v. Ram Doyal*, 23 All. 502 : (1901) 21 A.W.N. 150. See also *Shankar v. Mukta*, 22 Bom. 513 ; *Ratan Chand Jwala Das v. Asa Singh Bagha Singh*, 62 I.C. 698.

Not an acknowledgment.—Where a *Rokh* contained credit entries and the balance due on the settlement of last account and the interest thereon up to date and debit entries of the amount paid off and a balancing item of Rs. 4,397-12-3 and then the words “balance payable up to Karthika Sudhi first of Sambat 1974 Rs. 4,397-12-3” occurred and the defendant signed the same, the *Roka* is not an acknowledgment within the meaning of Art. 1 Sch. I of the Stamp Act requiring a stamp of one anna. The point to be considered is whether it was signed with the dominant intent to supply evidence of the debt. The Madras High Court said : “The 1st question is whether any particular document is given to supply evidence of the debt, . . . and it has been held that where the document contains other entries from which it is right to deduce that the intention is to arrive at a statement of account or put on record payments on either side, the intention to be inferred from the wording of the document, although it contains a balancing item at the end, is not to supply evidence to the creditor.” *Surjimull Murlidhar Chandik v. Ananta Lal Damani and another*, 45 M.L.J. 399 : 46 Mad. 948 (952) : 1923 M.W.N. 833 : 18 L.W. 485 : 74 Ind. Cas. 1029 : 1924 All. I.R. 352 (M.) ; *Bishambar Nath v. Nand Kishore*, 15 All. 56 : 1892 A.W.N. 234 where the letter was not written to supply evidence of a debt, although there was acknowledgment of the liability.

But where an account of money due on two *rokas* was made and another *roka* was executed for the sum found due on the prior *rokas* and the latter *roka* bore a stamp of one anna, held that the acknowledgment of the balance found due on the two *rokas* was an acknowledgment within Sch. I. Art. I of the Stamp Act and does not evidence a new contract to pay and does not give the plaintiff a new cause of action, *Jawahir Singh v. Lachman Das*, 3 O.C. 195.

A letter stating in reply that the statement of account sent is correct, is not an acknowledgment, *Nagappa Chetty v. V. A. A. R. Firm*, 49 M.L.J. 306 : 1925 M.W.N. 484 : 1925 A.I.R. 1215 (Mad.) : 91 I.C. 772 : 22 L.W. 12.

Promissory note or acknowledgment.—A memorandum was signed by three persons to borrow money from a fourth to the following effect, “account of Bhawani Din, Katwari Kalwar, Bindesri Kalwar, 8th February 1901, interest 1 per cent. per mensem payable, 3rd May 1901, Rs. 500 borrowed from Udit Upadhyas for a sugar factory”. It was held to be not a promissory note nor an acknowledgment coupled with a promise to pay, but a mere memorandum, *Udit Upadhyas v. Bhawani Din*, 27 All. 84 : 1 All. L.J. 483 : (1904) 24 A.W.N. 169 dissented from in *Enatullah Biswas v. Gajraddi Biswas*, 11 C. W. N. 1122. See also *Prasanna Kumar Pal v. Pananulla Maji*, 79 I. C. 77 : 1923 A.I.R. 659 (Cal.) ; *Gobind Gopal v. Balmantrao Hari*, 22 Bom. 986.

An instrument stamped with one anna stamp and in following terms :—"Agra, 14th November, 1877, due to K., cloth merchant the sum of Rs. 200 only to be paid before January, 1874" was held to be an acknowledgment of debt, *Kanhaya Lal v. Stowell*, 3 All. 581 F.B. (but this was under old law).

A promissory note which is insufficiently stamped cannot be used in evidence as an acknowledgment of the debt, *Bishunath Singh v. Ishri Dayal*, 5 O.W.N. 750 : 112 I.C. 247 : 1928 A.I.R. 408 (Oudh.).

(i) "Debt exceeding Rs. 20 in amount or value."—**Account not signed—mere memorandum**—A suit was brought to recover certain amount due on a document containing the following entry :—Account of (defdt's) 8th February, 1901, Rs. 500, borrowed from (plaintiff); and it was stamped with a duty of one anna. The lower court refused to admit it as it was not stamped properly, *held*, on appeal, that the document is not a promissory note nor a bond nor an acknowledgment but simply a note or memorandum drawn up between the parties as a transaction which had just been settled between them, *Udit Upadhaya v. Bhawani Din*, 27 All. 84 : (1904) All. W.N. 169 : 1 All. L.J. 483 (dissented from in *Enatullah Biswas v. Garajuddin Biswas*, 11 C.W.N. 1122).

Where the plaintiff sued for recovery of amounts due against the defendants,—a firm of bankers,—as heir to her husband who lent the money and in support of her claim produced two documents described as "*Sarkhats*" i.e., documents in the form of extracts from banker's books showing a credit side and a debit side and a balance struck, but they were not signed by the parties or either of them, *held* that these are mere memoranda and need not be stamped—*Duhlma Kunwar v. Mahadeo Prosad*, 28 All. 436 : 3 All L.J. 242 : (1906) A.W.N. 80. See also *Nand Ram v. Ram Prosad*, 2 All. 641 ; *Mahopal Singh v. Mahesh Singh*, (1881) 1 All. W.N. 87 ; *Harichand v. Jivna Subhana*, 11 Bom. 526 : 1887 P.J. 90 ; *Mahadeo Koeri v. Sheoraj Ram Teli*, 41 All. 169 : 17 A.L.J. 19 : 52 I.C. 974.

Memorandum—although signed.—"Plaintiff and defendant had various monetary dealings and the accounts amongst them were adjusted up to 1st September, 1908, showing a balance of Rs. 45, 039-9-3 due to the plaintiff below which the words : "I accept this as correct. E. and O. E." were written by plaintiff and the document was signed by the defendant but no stamp was affixed. The balance was carried forward and at the date of suit a larger amount was due, The 1st court held the document to be in acknowledgment of a debt and refused to admit it as it was not stamped; on appeal the appeal court held that the signature of the defendant admitting the balance struck to be correct E. and O. E. was not an acknowledgment within Sch. I, Art. 1 of the Stamp Act but an admission of the correctness of the account. *J. C. Galstaun v. W. O. Hutchison*, 39 Cal. 789 : 16 C.W.N. 945 : 15 Ind. Cas. 279 ; *Ram Dayal v. Kumar Gangadhar Bagla*, 8 Bur. L.T. 238 : 29 Ind. Cas. 943. See also *Sitaram v. Ram Prasad Ram*, 18 C.W.N.

Hatchitta.—An account in a *hatchitta*, showing advances of money to the defendant and also containing entries as to payments by him, the entire document being written and signed by the defendant,—is admissible in evidence without any stamp. *Broja Gobinda Saha v. Goluck Chunder Saha*, 9 Cal. 885: 3 C.L.R. 520. See also *Kalu v. Basantamal*, 33 P.R. 1886 where the balance struck was sealed.

A nikash by a gumasta of a business showing how much is due from him to the owner of the business and signed by him, is not an acknowledgment and is admissible although not signed, *Nund Kumar Saha v. Surnomoyi*, 15 Cal. 162, but the determination of the question whether an entry by the debtor in a creditor's book amounts to an acknowledgment depends on the circumstances of each case, *Binja Ram v. Raj Mohun Roy*, 8 Cal. 282; *Ramaswami Aiyar v. Gnanamani Nachiar*, 31 M.L.J. 851; *N. M. R. Nagappa Chetty and others v. V. A. A. R. Firm*, 49 M.L.J. 306: 1925 M.W.N. 484: 91 I.C. 772: 1925 A.I.R. 1215 (Mad).

Balance.—Balance brought forward at the end of the year in a running account and kept in a book is not to be considered a new balance requiring a fresh stamp. *Indar Chand Aswal v. Kalee Dass Mitter*, 24 W.R. 439.

(ii) **Signed.**—Where an account is written by the debtor in the khata book of the creditor and signed by him at the top of the entry, *held*, that this is a sufficient signature, *Jekison Bapuji v. Bhewsar Bhoga Jotha*, 5 Bom. 89; *Andarji Kalyanji v. Dulabh Jeevan*, 5 Bom. 85; when the account is written in a separate piece of paper, *Gangadhar Rao v. Shidramapa*, 15 Bom. 586.

See other cases under s. 2 (12) "Executed", *supra*.

By or on behalf of the debtor.—See *Ambica Dat Vyas v. Nityanand Singh*, 30 Cal. 687, *supra*, where it was held, that there were other conditions to be fulfilled, one of which is a very important one, and that it should be written or signed on behalf of a debtor in order to supply evidence of a debt.

Not signed by debtor.—Where the entry is not signed by the debtor, such an entry is not a note or a memorandum and need not be stamped, *Nandram v. Ram Prosad*, 2 All. 641; *Harichand v. Jivna Subhana*, 11 Bom. 526: 1887 P.J. 90.

A khata in the name of a debtor acknowledging receipt of the amount advanced and bearing signature of the writer of the khata as a writer of it merely, *held* that the instrument was an acknowledgment written within the meaning of s. 3 clause 4 (b) [now s. 2 (5)] of the Stamp Act (1 of 1879), *Dulabh Vannali v. Rehman Jamal*, 14 Bom. 511.

(iii) **The instrument must be intended to supply evidence of a debt.**—The test is whether there was any necessity to supply evidence of the debt, *Bishambar Nath v. Nanukishore*, 15 All. 56: 1892 A.W.N. 234. See also *Ram Das v. Inayat-Ullah*, 45 All. 374: 21 All. L.J. 233: 71 I.C. 1027: 1923 A.I.R. (All.) 297.

The 1st question is whether any particular document is executed to supply evidence of the debt that is to be used in evidence against the maker, *Surjimull Murlidhar Chandik v. Ananta Lal Damni and others*, 46 Mad. 948: 45 M.L.J. 399: 1923 M.W.N. 833: 74 Ind. Cas. 1029: 1924 A.I.R. 352 (Mad): 18 L.W. 485.

When from the terms of a document it cannot be decided whether it contained an acknowledgment of a debt and was executed in order to supply evidence of such a debt or was a mere note or extract of accounts and if such instrument is unstamped it cannot be held to be inadmissible in evidence without taking evidence as to the purpose for which it was executed. *Sch. I, Art. 1 of the Stamp Act requires that the instrument must be obtained to supply evidence of a debt; Ramaswami Aiyangar v. T. Raghava Aiyangar*, 1926 M.W.N. 118: 92 I.C. 1046: 24 L.W. 82.

In each case, the instrument of acknowledgment must be carefully examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt, *Mulji Lal v. Lingji Makaji*, 21 Bom. 201 (205).

Where a document contains other entries from which it is right to deduce that the intention is to arrive at a statement of accounts or to put on record payment on either side, the intention to be inferred from the signing of the document although it contains a Calancing item obtained, is not to supply evidence to the debt. *Dhanrajmal Kishindas v. Sanwansing Sobhasing and another* 21 s L.R. 372: 121 I.C. 873: 1930 A.I.R. 189 (Sind.).

(iv) The instrument to be left in possession of the creditor.—The High Court of Allahabad in *In the matter of Shiam Sundar Lal, Shankar Lal*, 50 All. 504: 26 A.L.J. 403: 118 I.C. 173: 1928 A.I.R. 162 (Allahabad) said: "as the facts are stated, the entries on both the sides of this *Sarkhat* are made by the debtors Shiam Sundar Lal, Shankar Lal themselves. The reference does not mention whether they themselves kept the document or whether it was handed over to the creditors." *Obviously Their Lordships thought that the facts as to which party kept the document is very material.*

(v) Promise to pay.—Implied promise.—The words "I am bound to pay" and "I am liable to pay" do not amount to an undertaking to pay, *Tirupathi Gounden v. Rama Reddi*, 21 Mad. 49: 7 M.L.J. 294, but see *Pratapchand v. Pursotamdas*, 18 Bom. L.R. 124.

An unconditional acknowledgment implies a promise to pay, therefore, if unstamped, the instrument will be admissible on payment of penalty. *Firm of Ram Ditta Mal Ramdhan v. Kesar Das*, 119 I.C. 417: *Pralhad v. Shiblal and others*, 132 I.C. 881: 1931 A.I.R. 631 (Lah.): *Fateh Chand v. Ganga Singh*, 10 Lah. 748: 115 I.C. 853.

If the defendant after going through the previous account strikes a balance in the *bahi* of the plaintiff for an amount as due to the plaintiff, then the entry is an acknowledgment (if the words used justify it) and if it purports to import a promise to pay, it is an agreement and is admissible in evidence on payment of penalty and duty *Rela Mal v. Shoran*, 132 I.C. 844.

In *Abdul Rafiq v. Bhajan*, 53 All. 963, the suit was on an acknowledgment for Rs. 250/- stamped with a stamp of one anna. The Allahabad High Court decreed the suit for Rs. 141-9-0 and Sulaiman A.C.J. observed at page 987: "Article 49 of the Indian Stamp Act prescribed a duty up to 4 annas for promissory notes payable on demand, while one anna is required for an acknowledgment under Article 1 or a receipt under Article 53. If a mere acknowledgment or a receipt implies such a promise to pay as can be made the basis of a fresh suit, a creditor can evade payment of the necessary duty, or even withhold an insufficiently stamped promissory note and simply sue on the basis of an acknowledgment or a receipt as the case may be." An acknowledgment as specified in Art. 1 of the Indian Stamp Act does not contain any promise to pay a debt. See also *Gobind Das v. Sarju Das*, 30 All. 268: 5 A.L.J. 336: (1908) A.W.N. 131.

In a letter.—A document in the form of a letter on a printed form in a book kept by the plaintiff, addressed to and signed by the defendant, which after mentioning certain debits and credits concludes with the statement that a certain sum of money is due from the defendant to the plaintiff, is an acknowledgment made *in order to supply evidence of the debt* within the meaning of Art. 1 of Sch. I to the Stamp Act and if unstamped cannot be admitted in evidence under s. 35 of the Stamp Act, *Ram Das v. Inayat Ullah*, 45 All. 374: 21 All. L.J. 263: 71 Ind. Cas. 1027: 1923 A.I.R. 297 (All.).

But a letter may be tendered in evidence as an acknowledgment of a debt and is admissible in evidence though unstamped when it was not written with *the intention of supplying evidence* of the debt and there was at that time other evidence of the same, *Bishambar Nath v. Nand Kishore*, 15 All. 56: (1892) 12 All. W.N. 234. See also *Mulji Lala v. Lingu Makaji*, 21 Bom. 201; *Ambica Dal Vyas v. Nityanand Singh*, 30 Cal. 687.

A letter by one partner to another stating the terms of compromise as regards their dispute and also stating how much is due to him, is not an acknowledgment but is an agreement not otherwise provided for and should be stamped with a stamp of eight annas. *Lakshminarayana v. Ramagohi Garu*, 8 M.L.J. 66; see also *Surjanarayan v. Narendraray Thattray*, 19 Mad. 225.

Conditional acknowledgment.—A conditional acknowledgment does not imply a promise to pay, therefore it would come under this Article, hence, if unstamped would be inadmissible in evidence, *Sitaram v. Thakur*, 50 I.C. 781.

Time of stamping.—A letter containing an acknowledgment need not be stamped before it can be admitted in evidence, *Sital Parshad v. Monahur Das*, 23 W.R. 325, *but see s. 17 of the preseat Stamp Act and the cases cited there.*

Of a foreign acknowledgment.—An acknowledgment embodied in an account-book was executed at Ujjain in Gwalior State and stamped with an one anna stamp of the Gwalior State. The

account-book containing the acknowledgment was produced in British India at Cawnpore Court, but was not stamped till more than three months afterwards. Under S. 18, Stamp Act, every instrument chargeable with duty executed out of British India, and not being a bill of exchange, cheque, or promissory note may be stamped, within three months after it has been received in British India. Therefore the acknowledgment was not admissible in British India as evidence as the proviso as to payment of duty and penalty does not apply as the instrument is chargeable with a duty of one anna. The counsel relied on the case of *Amina Begum v. The Nawab of Rampore*, 33 All. 571 : 8 A.L.J. 566 : 10 I.C. 247, but it was held that that was a case of a promissory note and therefore S. 18. does not apply to that case but s. 19 applied. *Ali Mohammad v. Jagannath Prasad*, 1928 A.I.R. 666 (All.) : 26 A.L.J. 823 : 115 I.C. 453.

Proviso—Stipulation to pay interest—Hatchitta.—When an entry made in a hatchitta agreeing to pay interest on the amount received by the borrower, held that this is not a mere acknowledgment but an agreement, *Mulchand Lala v. Kashibullabh Biswas*, 45 Cal. 111 : 11 C.W.N. 1122 ; *Luxmi Bai v. Ganesh Raghunath*, 25 Bom. 373 : 2 Bom. L.R. 113. See contra, *Udit Upadhyaya v. Bhawani Din*, 27 All. 84 : (1904) 24 A.W.N. 169 : 1 A.L.J. 483.

A promise for payment of future interest in an instrument takes it out of the definition of acknowledgment in the Stamp Act. *Ram Singh v. Parumal and another*, 9 S.L.R. 150 : 32 Ind. Cas. 582 : *Protap Chand v. Pursotamdas*, 18 Bom. L.R. 124.

The insertion of interest clause in an account stated and signed by the debtor, changes it from an acknowledgment into an agreement. *Girdhar Narain v. Umar*, 4 Bom. 326. See also *Prasannakumar v. Pananulla*, 77 I.C. 77 ; *Murari Mohan Rai v. Khattur Nath Mullick*, 15 Cal. 150 ; *Prahlad Prasad v. Bhagwan Das*, 49 All. 496 : 25 All. L.J. 403 : 100 I.C. 593 : 1927 A.I.R. 677 (Allahabad) ; *In re K. M. K. R. Kumarappa Chetty*, 4 L.B.R. 330 : 14 Bur. L.R. 287.

An entry in the *bahi* of the creditor stipulating to pay interest and below which was appended the thumb impression of the debtor should be read with the balance struck by the debtor in the same page, and falls within the proviso to Art. 1, Sch. 1 of the Stamp Act, *Sudhan v. Baru and others*, 127 I.C. 706 : 1931 A.I.R. 4 (Lah.).

Old Law.—Under the old law (i.e., under Act 1 of 1879) a stipulation to pay interest did not take an instrument out of the category of an acknowledgment as the words “provided . . . property” did not occur in the old Article, *Hiralal v. Queen Empress*, 22 Cal. 757.

Penalty.—In *Ram Das v. Inayat-ullah*, 45 All. 374 : 21 A.L.J. 263 : 71 I.C. 1027 : 1923 A.I.R. 297 (All.) it was held that an unstamped acknowledgment cannot be admitted on the payment of penalty under s. 35 of the Indian Stamp Act, 1899. See also *Sitaram v. Thakur*, 50 I.C. 781.

Description of Instrument.	Proper Stamp-duty.
<p>2. Administration-bond, including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Saving Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889,—</p> <p>(a) where the amount does not exceed Rs. 1,000 ;</p> <p>(b) in any other case.</p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees. [<i>now raised to Rs. 10 in Bengal, Madras, Burma, Bombay, Punjab and U. P.</i>]</p>

NOTES.

See Art. 2, Sch. I of Act 1 of 1879.

The Indian Succession Act (Act X of 1865), the Probate and Administration Act (Act V of 1881) and the Succession Certificate Act (Act VII of 1889) have been repealed by Act XXXIX of 1925.

Stamp to be used.—Impressed stamps are to be used, *vide* rules 6 and 10 (i).

Administration Bonds.—An administration bond executed on a grant of Letters of Administration is to be stamped under this Article as the Stamp Act is an Act other than the Court Fees Act and must be presumed to repeal that Act as far as this Article is concerned as it is inconsistent with the provisions of Sch. II Art. 6 of the Court Fees Act, *In the goods of F. M. Troward*, 165 P.R. 1879.

Description of Instrument.	Proper Stamp-duty.
<p>3. Adoption-deed, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.</p>	<p>Ten rupees [<i>now raised to Rs. 15 in Madras and to Rs. 20 in Bengal, Punjab and Bombay.</i>]</p>

NOTES.

See Art. 38, Sch. I of Act 1 of 1879.

The present Article includes documents recording an adoption, which were not liable to duty under the former Act. Hence the

decision in *In the matter of Ambai* (13 Bom. 280) and *In the matter of Hanmapa and others*, (13 Bom. 281) are no longer good law.

Stamp to be used.—Impressed stamp—rule 6.

Description of Instrument.	Proper Stamp-duty.
ADVOCATE. See ENTRY AS AN ADVOCATE (No. 30).	
4. Affidavit, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	One rupee [<i>now raised to Rs. 2 in Bengal, Madras, Burma, Bombay, Punjab and U.P.</i>]
<p><i>Exemptions.</i></p> <p>Affidavit or declaration in writing when made—</p> <p>(a) as a condition of enrolment under the Indian Army Act, 1911 or the Indian Air Force Act, 1932,</p> <p>(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or</p> <p>(c) for the sole purpose of enabling any person to receive any person or charitable allowance.</p>	

NOTES.

See Art. 3, Sch. I of the Act I of 1879. For exemptions see Art. 1, Sch. 1 of Act I of 1879 and s. 15 (2) and Art. 14, Sch. II of Act XVIII of 1869. The Indian Articles of War was Act 5 of 1869 and was repealed by the Indian Army Act, 1911 (8 of 1911).

The duty prescribed by this Article can be levied only on affidavits sworn before Commissioner in Courts or offices other than Civil Courts or High Courts. In the latter cases the fee is that prescribed in rules framed by several High Courts.

As to affidavits to be filed in courts, see Order 19 of the Code of Civil Procedure. These relate to matters which a court requires to be proved by affidavit.

It should be noted that under s. 5, of this Act an instrument relating to distinct matters shall be chargeable with the aggregate amount of stamps, hence an affidavit relating to more than one case must be so charged. This view is supported by *R. v. Carlisle* (1819) 1 Chit. 451 ; *Atkins v. Reynolds*, (1820) 2 Chit. 4.

Amendment.—The words “as condition of enrolment under the Indian Army Act, 1911” in cl. (a) of the Exemptions were introduced for the original cl. (a) by the Repealing and Amending Act, 1928 (Act XVIII of 1928). The words “or the Indian Air Force Act, 1932” in cl. (a) of the Exemptions were added by Act XIV of 1932.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (i).

Affidavits and counter affidavits to be used in a Criminal Courts are to bear Court Fee stamps and if these are stamped with non-judicial stamps in contravention of the General Rules and Circular Orders of the Calcutta High Court, these would be inadmissible in evidence. *Amibica Charan Das v. Emperor*, 58 Cal. 1211 : 53 C.L.J. 184 (186) : 35 C.W.N. 690 : 131 I.C. 262 : 1931 A.I.R. 344 (Cal.) : I.R. 1931 Cal. 438.

Joint affidavit.—A declaration as to whole by one person and as to part by another in the same matter, is one declaration and not a declaration as to two distinct matters and is, therefore, chargeable with one fee. *Reversionary Interest Society, Ltd. v. Inland Revenue Commissioners* (1906) 22 T.L.R. 740.

Corrections in Affidavits.—In *Pearson v. Wilcox*, 1 W.R. 492 : 68 E.R. 1134, the court allowed an erroneously initialled affidavit to be taken off the file and resworn with proper title without any fresh stamp.

Exemption.—Cl. (a)—The Indian Articles of War Act, 5 of 1869 was repealed by the present Indian Army Act (Act 8 of 1911).

Cl. (b) ; Immediate purpose.—When a statute requires that something is to be done forthwith or “immediately,” or even instantly, it would probably be understood to allow a reasonable time for doing it.—*Maxwell on Interpretation of Statutes*. The test is whether under the circumstances there is such an unreasonable delay as would be inconsistent with what is meant by “immediate.” *Forsdike v. Stone*, (1860) L.R. 3 C.P. 607 ; *Banker v. Lewis and Peat*, (1913) 3 K.B. 34 C.A. See also *In re the application of Sheshamma*, 12 Bom. 276 (277) ; *In re Land Acquisition Act*, 30 Bom. 275 : 7 Bom. L.R. 697.

Filed or used in any Court or before the officer of any Court.—Where an affidavit was made and filed before a Nazir of a court instead of the court held by the High Court on reference: “The mere fact that it suited the convenience of the party making the affidavit to make it at Sirsi instead of going for that purpose to the court at Karwar, where she proposed to file it, does not, we think, take the instance out of the words of the intention which may be reasonably imputed to legislature, *In re the application of Sheshamma*, 12 Bom. 276.

See Order 5, Rule 19 of the Code of Civil Procedure as to affidavits by serving officer.

Declaration.—A document meant to be a declaration under rule 10 (2) of the Berar Electoral rules need not be stamped. The mere fact that the document was written on an one rupee general stamp and the signature was attested by the Magistrate does not alter the nature of the document, *Sadasheo Waman Kelkar v. R. V. Mahajan*, 60 I.C. 871 (877).

Description of Instrument.	Proper Stamp-duty.
<p>5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—</p> <p>(a) if relating to the sale of a bill of exchange ;</p> <p>[(aa) if relating to the sale of Government security.</p> <p>(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;</p> <p>[(b) if relating to the sale of a share in an incorporated company or other body corporate ;</p> <p>(c) if not otherwise provided for ;</p>	<p>Two Annas (<i>Duty raised to three annas in Bengal, Madras & U. P. and to 4 annas in Bombay, Punjab and Burma.</i>)</p> <p>Subject to a maximum of 20 rupees, 2 annas for every Rs. 10,000 or part thereof of the value of the security].—added in Bombay.</p> <p>Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p>[Subject to a maximum of fifteen rupees, one-and-a-half annas for every Rs. 10,000 or part thereof of the value of the security or share—in Bengal, Madras and U.P.</p> <p>Subject to a maximum of fifteen rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security or share—in the Punjab.</p> <p>Subject to a maximum of 20 rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security or share—in Burma.]</p> <p>Two annas for every Rs. 5,000 or part thereof, of the value of the share].—substituted in Bombay.</p> <p>Eight annas [<i>Duty raised to 12 annas in Bengal, Madras & U.P. and to one rupee in Bombay, Punjab and Burma.</i>]</p>

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Agreement or memorandum of agreement—</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No. 43 ;</p> <p>(b) made in the form of tenders to the Government of India for or relating to any loan ;</p> <p>(c) made under the European Vagrancy Act, 1874, section 17.</p>	

NOTES.

See Art. 5, Sch. I of Act 1 of 1879 and Arts. 3 and 11 of Sch. II of Act XVIII of 1869. For exemption see Art. 2 (a) (b) of Sch. II of Act 1 of 1879 and s. 15 (8) of Act XVIII of 1869. The European vagrancy Act is Act IX of 1874.

Amendment.—The present Article was substituted for the original Article by s. 3 (i) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

Stamp to be used.—Special adhesive stamps bearing the word 'agreement'—rule 17 (f); Coloured impression where it comes under rule 8; Foreign instruments—rule 12.

Agreement.—An agreement is not defined in the Indian Stamp Act. It has been defined in the Indian Contract Act, sec. 2, cl. (e) thus: "Every promise and every set of promise, forming the consideration for each other, is an agreement."

A recital in an instrument, that in consideration of certain debts the paddy fields were delivered to creditor together with an undertaking that a registered conveyance will be executed later on, is an agreement especially if the instrument showed that the transaction has not passed the stage of a contract of sale, *Ma Thin Ta v. K. K. R. M. Peera Kalai*, 131 I.C. 503 : 1931 A.I.R. 192 (Ran.).

Agreement when it is not liable to duty.—No document requires an agreement stamp unless it amounts to an agreement or a memorandum of an agreement. The mere fact that a document may assist in proving a contract does not render it chargeable with stamp duty; it is so chargeable when the document amounts to an agreement itself or to a memorandum of an agreement of itself or to a memorandum of an agreement already made. A mere proposal or

offer until accepted amounts to nothing. If accepted in writing, the offer and acceptance together amount to an agreement, but if accepted by parol, such acceptance does not convert the offer into an agreement nor into a memorandum of an agreement, unless indeed after the acceptance, something is said or done by the parties to indicate that in the future it is to be so considered. *Carlill v. The Carbolic Smoke Ball Company*, (1892) 2 Q.B. 484 : 61 L.J. Q.B. 696.

A written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. An offer in writing but accepted in parol does not require a stamp. Therefore where a bank, before advancing money, required a declaration by the borrower to be made in the confidential register of the bank that the borrower would not further encumber the property without first paying the bank the amount advanced, and then advanced money on pro-note, *held* that the entries in the registers did not amount to an agreement but as a written proposal or a written offer and does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. *The Secretary to the Commissioner of Salt, Abkari and Separate Revenue v. The South Indian Bank Ltd.*, 38 Mad. 349 : 25 M.L.J. 119 : 1913 M.W.N. 1012 : 20 I.C. 865 F.B.

A writing which is merely evidence of a fact from which a previous agreement may be inferred does not require a stamp. *Parker v. Dubois*, (1836) 1 M. and W. 30 : 5 L.J.Ex. 90 ; *Marshall v. Powell*, (1846) Q.B. 779 : 16 L.J.Q.B. 5 : 115 E.R. 1475.

If the parties are agreed as to terms but later on if one of them writes out the terms in the form of a proposal to which the other party agrees orally, then the writing being a proposal only does not require a stamp, *Laing v. Smith*, (1862) 3 F. and F. 97 but a proposal made orally and accepted in writing is inadmissible in evidence without stamp, *Hegarty v. Milne*, (1854) 14 C.B. 627 : 139 E.R. 258. In *Hudspeth v. Yarnold*, 9 C.B. 625 : 137 E.R. 1036 it was held that letters containing proposal only does not require a stamp as no agreement can be constituted until the proposal is accepted.

A letter by a proprietor of a theatre to a third party containing the expression that the plaintiff (an actor) must be satisfied with his present salary until the proprietor can know what turn the season takes is not an agreement, but a mere admission and therefore does not require a stamp, *Frazer v. Bunn*, 8 C. and P. 704.

Promise to pay barred debt.—A promise to pay a barred debt comes within s. 25 (3) of the Indian Contract Act and the instrument need not be stamped, *Billings v. The Uncovenanted Service Bank*, 3 All. 781. See also *Sutherland Clark v. Mrs. Rose Grimshaw*, 73 Ind. Cas. 652. Under s. 25 (3) of the Indian Contract Act, a promise made in writing and signed by the person to be charged therewith to pay a barred debt is a good consideration, but there must be a distinct promise and not a mere acknowledgment, *Gobind Das v. Sarju Das*, 30 All. 268 : 5 A.L.J. 336 : 1908 A.W.N. 131. See the cases cited in *Gulzar Mandal v. Sariman Mandalini and others*, 36 C.L.J. 228 ; *Debi Prasad v. Ram Ghulum Saha*, 19 C.L.J. 263.

Bad bills, cheques, etc.—A bill, note or cheque when bad owing to inclusion of conditions and stipulation, may be used as an agreement if the instrument bears sufficient stamp, as an agreement, *Bank of Bengal v. Rudhakissen*, 3 M.L.A. 19.

Agreement with penal clause in case of failure.—Where the plaintiff sold a boat to defendant, who paid Rs. 300 in cash, and for the balance a pro-note was executed payable with interest at $1\frac{1}{4}$ p. c. per mensem, and stamped with a stamp of one auna and at the same time the defendant executed an agreement attested by a witness and undertook to pay the amount covered by the pro-note by instalments, and in the agreement it was stipulated that if the defendant failed to pay on or before the date specified, then the instalments already paid will be forfeited and the agreement was stamped with a stamp of one Rupee held that the latter document is an agreement and the stamp payable is eight annas, *T. Katchi Rowther v. Naina Mahomed*, 8 L.B.R. 155: 28 Ind. Cas. 300.

•An agreement to deliver goods coupled with a penal clause in case of failure, is not a bond but is an agreement even if attested. The distinction is that a "bond" creates an obligation but penal stipulation does not, and the latter always "sounds in damages" i.e., can be compensated in money, *Collector of Rangoon v. Maung Aung Ba*, 9 Bur. L.T. 111: 8 L.B.R. 320: 33 Ind. Cas. 920. A bond is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages. The plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the judge at the trial considers reasonable, *Gisborne & Co. v. Subal Bowri*, 8 Cal. 284: 10 C.L.R. 219. See also *Robert and Charriol v. Shircore*, 7 B.L.R. 510. A covenant in an agreement to do a particular act and a further stipulation to compensate its breach in damages does not convert it into a "bond." *The Collector of Nimar v. Lakhmichandra of Khandwa*, 98 I.C. 631: 1927 A.I.R. 72 (Nagpure).

As regards the case reported in 2 All. 654, it is submitted that the case related to Act XVIII of 1869 where the provisions were different and there was no provision corresponding to clause (c) of the present Act.

Compromise.—A compromise is a binding agreement between the parties and none the less binding because it was followed by a decree, *Keshab Panda v. Bhabani Panda*, 18 C.L.J. 187 (189); *J. C. Galstaun Woomesh Chandra Bannerjee*, 25 C.L.J. 304.

Hire and purchase agreement.—A hire and purchase agreement being an agreement to hire with an option of purchase to the hirer, is not an agreement to purchase and comes under the Art. 5 cl. (c) of the Stamp Act, *In re Linotype and Machinery Co., Ltd.*, 44 Cal. 72: 20 C.W.N. 125: 24 C.L.J. 93: 37 I.C. 175; *Gapal Tukaram v. Sorabji Nusserwanji*, (1904) 6 Bom. L.R. 871.

Entry in a register.—Where the defendant hired certain machinery for manufacture of sugar and entered it in a book kept by the owner

of machinery, for the purpose of registering the sums payable for letting out the machinery, with the thumb impression of the hirer affixed thereto, held that the entry amounted to an "instrument" as defined in S. 2, sub-sec. (14) of the Stamp Act 1899, and was a memorandum of an agreement within Art. 5 (c) of the first Schedule to that Act, *Mutasaddi Lal v. Harkesh*, 36 All. 11: 11 All. L.J. 966: 21 Ind. Cas. 601

Agreement to deliver goods in exchange of goods.—To bring an agreement under the exemption from payment of stamp duty under the C. P. Stamp Law Ruling Circular No. 7, it must not only be an agreement for sale of goods or merchandise including grain or other agricultural produce but it must be unattested.

Agreement to deliver cotton or in default to pay its price or money equivalent at the prevailing market rate together with *didhi* in consideration of a present delivery of a certain quantity of cotton seed is not an agreement for sale of goods or merchandise as it is not in consideration of a price paid or promised but is an agreement to deliver goods in exchange of goods and as such is liable to a stamp duty as an agreement "not otherwise provided for." If such an agreement is attested, it is a bond as it then falls within the category of instruments referred to in s. 2 (5) (c) of the Indian Stamp Act and is liable to be stamped under Art. 15 of Schedule 1 of the Act, *The Collector of Nimar v. Lakhmichandra of Khandwa*, 98 I.C. 631: 1927 A.I.R. 72 (Nag.).

An agreement or a memorandum of agreement to deliver goods in exchange for goods, is not an agreement of sale under Art. 5 Schedule I of the Indian Stamp Act, and must be stamped as "an agreement not otherwise provided for." The difference between a sale and exchange is this, that in the former the price is paid in money, whilst in the latter it is paid in goods by way of barter. *Samaratmal Uthamchand v. Govind*, 25 Bom 696 (698): 3 Bom. L.R. 384. See also *Volkart Brothers v. Vethivelu Nadan*, 11 Mad. 459 (467); *Rainier v. Gould*, 13 Mad. 225.

Where the executants of a document purported to sell their interest in certain receipts for company's shares purchased by them and to execute in future a pucca document of sale but the price of the shares were neither advanced nor the receipts delivered, held that as the property in receipts did not pass, the document is to be stamped as an agreement, *Heptulla Sheikh Adam & Co. v. Esafali Abdul Ali*, 14 Bom. 316.

Agreement to deliver grain.—Agreement to deliver grain after receipt of money and attested by two witnesses, is not a bond. An agreement to deliver agricultural produce made for consideration and for compensation in case of default, is an agreement, *The Collector of Rangoon v. Maung Aung Ba*, 9 Bur. L.T. 111: 8 L.B.R. 982: 33 Ind. Cas. 920. An instrument containing an undertaking to deliver grain on demand, is an agreement, and is to be stamped under Art. 5, Schedule I of the Stamp Act. *Thakurain Abhairaj Kuar v. Datadin*, 73 Ind. Cas. 45: 1924 A.I.R. 106 (Oudh.).

Where the instrument consisted of two parts, 1st part containing a promise to repay money with interest, the 2nd part containing promise to deliver a quantity of grain, *held* that the last part is an agreement, *Chinnaji v. Ranu*, 4 Bom. 19. *An instrument whereby a person acknowledges the receipt of a sum of money and in consideration of which he agrees to sell paddy at harvest time at a certain rate is not an agreement for or relating to the sale of goods or merchandise and is not therefore exempt but is liable to duty under Art. 5 (a) of the Stamp Act, *In re Revenue-Stamp Case of the Collector, Prome*; (1910) 5 L.B.R. 157 F.B.

Agreement to pay a debt with interest—Hatchittas.—Where a debtor wrote out an account of his debt on a sheet of paper and agreed to pay interest and addressed the same to the creditor, *held* that the instrument is not a mere acknowledgment of a debt but also an agreement and should be stamped under this Article, *Mulchand Lala v. Kashi Ballav Biswas*, 35 Cal. 111; 11 C.W.N. 1120. See also *Enatulla Biswas v. Gujarabdi Biswas*, 11 C.W.N. 1122; *Mrs. Ferrier v. Ramkulpa Ghose*, 23 W.R. 403; *Murari Mohan Roy v. Khetur Nath Mullick*, 15 Cal. 150.

Where a document recited that a certain amount brought forward from an account, was due and stated that interest at a certain rate was payable and further there was a stipulation as to the time for payment and was signed by the person liable, *held* that the document is an agreement and not a promissory note, *Prasanna Kumar v. Panaula*, 79 I.C. 77.

An instrument containing an acknowledgment that a certain rate of interest has been agreed upon, but with no stipulation to pay, is an agreement and should be stamped as such, *Lazmibai v. Ganesh*, 26 Bom. 373; 2 Bom. L.R. 1132; *Protap Chand Gulabchand v. Pursolamdas Mulji*, 18 Bom. L.R. 124.

A statement of account was sent by a creditor to his debtor who admitted the correctness of the account and stated thereon: "interest at 12 annas per cent per mensem," *held* that in this case there is a stipulation to pay interest in future and this is sufficient to take it out of Art. 1, Schedule I of the Indian Stamp Act and bring it within the terms of Article 5 (c), Schedule I of the Indian Stamp Act, i.e., it is an agreement "not otherwise provided for." *Prahlad Prasad v. Bhagwan Das*, 49 All. 496; 25 All. L.J. 103; 100 I.C. 593; 1927 A.I.R. 677 (Allahabad). See also *Mahadeo Koeri v. Sheoraj Ram*, 41 All. 169; 17 A.L.J. 19; 52 I.C. 974; *In re K. M. K. R. Kumarpappa Chetty*, 4 L.B.R. 330; 14 Bur. L.R. 287; *Singh Govind v. Bijoy Bahadur Singh*, 52 All. 169; 27 A.L.J. 1279; 121 I.C. 108; 1929 A.I.R. 980 (All.).

An entry in an account book by a money-lender and bearing the thumb impression of the debtor that the sum advanced would be repaid in instalments by a certain date and in case of failure interest would accrue at a certain rate, can only be read as a memorandum of agreement requiring stamp under Art. 5, Sch. 1 of the Indian Stamp Act, *Ballabh Das v. Puran*, 5 Luck. 218; 6 O.W.N. 1012.

123 I.C. 853 : 1930 A.I.R. 194 (Oudh). A book entry containing a promise to re-pay with interest and attested by witness is a bond, *Hari Singh v. Fazal*, 56 I.C. 117.

Sarkhat—acknowledgment of a debt.—When an acknowledgment was in the following terms:—"Sarkhat executed in our favour of Sheoraj Ram Seku—by Mahadeo Ram, borrowed Rs. 200 interest rate Rs. 1-8 per cent. per mensem, date Baisakh Sudi 1st Sambat 1971" held that as there is a stipulation to pay interest the Sarkhat is an agreement under Art. 5 (c), of Schedule I of the Stamp Act and should be stamped as such, *Mahadeo Koeri v. Sheoraj Ram Teli*, 41 All. 169: 17 All. L.J. 19: 52 I.C. 974. See *Udit Upadhya v. Bhawani Din*, 27 All. 84: 1 A.L.J. 483: 1904 A.W.N. 169.

A document called a *Sarkhat* was executed by Messrs Shyam Sundar Lal, Shankar Lal agreeing to pay interest at Rs. 1-4 per cent. per mensem. The top portion of this contained the agreement to pay interest and was signed by these persons. Below their signatures there was a first entry as having been advanced to these men on the same date. Then followed entries of a number of items on the credit side and also entries of a number of items on the debit side. These were not totalled nor signed again. The document bore a stamp of 8 annas but it was not known who kept the document. The document was impounded and on a reference to the High Court, it was held that there can be no doubt that the top portion of the document amounted to an agreement which required a stamp duty of 8 annas. As regards the entries other than the first, the High Court held: "under s. 17 of the Indian Stamp Act, instruments chargeable with duty which were executed are required to be stamped before or at the time of the execution. The word 'executed' has been defined in section 2, sub-clause (12) as meaning signed with reference to the instrument." The other entries are not signed by debtors. It cannot therefore be said that they are separate agreements executed by debtors on various dates. In order to be different agreements these should have been separately executed which cannot be the case when there is only one set, of signatures. *In the matter of Shyam Sundar Lal Shankar Lal*, 50 All. 504 F.B.: 26 All. L.J. 277: 1928 A.I.R. 162 (Allahabad): 118 I.C. 173.

Agreement to lease.—See under Lease (Art. 35). Agreement to lease now falls under Art. 35, Schedule 1 of the Stamp Act and must be stamped under that Article. This abrogates the decision in *Reference under Stamp Act*, s. 46, 17 Mad. 280 F.B.: 4 M.L.J. 104. See also *In re Hormusji Irani*, 13 Bom. 87. But agreements to lease whereby no rent is reserved comes under clause (c), i.e., agreements not otherwise provided for, *In re Narayandas*, 3 Bom. L.R. 401.

Agreement in letters.—*Series of letters.*—Where an agreement to sell share is contained in a series of letters written between parties, but one of the letters is not stamped, held that the unstamped letter can be used as evidence as it cannot be determined which letter is to be stamped and the agreement is to be inferred from all of them, *Rainier v. Gould*, 13 Mad. 255; *In re V. R. S. A. R. Raman Chetty*, 4 L.B.R. 324: 14 Bur. L.T. 292. See also *Khoob Lal v. Jungle Sing*, 3 Cal. 787.

Agreement to lease contained in correspondence.—See *Boyd v. Krieg*, 17 Cal. 548, and under s. 35 proviso (c). It is sufficient if one letter is stamped; and see also under "Agreement to lease" s. 2 (16), *supra*. *Bijay v. Howrah Amla Railway Co.*, 38 C.L.J. 177.

Extension of time.—Where property is once mortgaged and further advance is made by a fresh mortgage deed which extends the time of the first mortgage, the stamp on the new mortgage is to be on the amount of the new loan, *Reference under Stamp Act, s. 16*, 1 Bom. L.R. 7.

Where in consideration of the mortgagor promising to pay an enhanced rate of interest and in consideration of his recognizing one of the several mortgagees to whose share the mortgage, on partition, had been allotted, as his only creditor, the present mortgagee agreed to extend the period of redemption, the instrument containing the stipulation to extend the period, is an agreement falling within Art. 5 (c) of Schedule I of the Stamp Act, *In the matter of Rameshwar Prosad*, 47 All. 408: 86 I.C. 1027: 1925 A.I.R. 601 (All.). See also *Annamalai Chetty v. Velayuthu Nadar*, 39 Mad. 129: 30 M.L.J. 51: 1916 M.W.N. 93: 32 I.C. 369 which is a case of extension of time in the case of a promissory note.

Agreement to pay pleader's fee.—An instrument containing an agreement to pay a certain sum to a pleader if the accused whom the pleader is defending is acquitted and stipulating that no payment will be made if the accused is convicted, is a bond as defined in Act XVIII of 1869, s. 3, paragraph 5 and must be stamped as such, *Spencer v. Emamooddeen*, 82 P.R. 1870.

Mushaharapatra.—In *Saroj Bandhu Chowdhury v. Inanada Sundari Deby*, 55 C.L.J. 375: 36 C.W.N. 535, the Calcutta High Court construed a mushaharapatra to be a deed of agreement and not a deed of settlement.

Post-script to a document.—A post-script to a document, containing a stipulation that the defendant should return two promissory notes deposited with him when a certain house would be given back to him in good order, requires a stamp of eight annas under Art. 11, Sch. II of Act XVIII of 1869, *Moti Lal and Bhogilal v. Munshook Kuramchand*, 4 Bom. 328.

Promissory note.—An instrument containing an agreement to pay principal with interest on demand is a promissory note and should be stamped as such, *Reference under Stamp Act, s. 60*, 4 Bom. L.R. 912. An agreement in writing accompanying a promissory note which postpones the time for payment is a valid and enforceable agreement, *Annamalai Chetty v. Velayuthu Nadar*, 39 Mad. 12: 32 I.C. 869: 30 M.L.J. 51: 1916 M.W.N. 93.

Not a handnote.—An instrument was to the following effect: "This document (handnote) is executed by me for the purpose of purchasing a ghor. I will take from you Rs. 7. I will pay interest on the sum at half an anna per rupee per mensem. Having received Rs. 7 in cash, this handnote is executed," held that the document is an agreement and should be stamped as such; it is not a handnote, nor a bond.

Murari Mohan Ray v. Khetter Nath Mullick, 15 Cal. 150. This case was distinguished in *Reference under Stamp Act*, s. 46, 4 Bom. L.R. 912, but that was a case where a totally independent agreement was added to a mere promise to pay.

Agreement to indemnify.—*Indemnity note to Railway Co.*—An indemnity note in favour of a Railway Co. by a consignee who is unable to produce Railway receipt is not an indemnity bond falling under Art. 23 of the Stamp Act but it is an agreement and should be stamped as such, *Reference from Chief Commissioner of Central Provinces*, 5 Bom 476 F.B.

Agreement with surety.—W. stood bail for the son of J. S. who was arrested. J. S. signed an agreement to indemnify W. from all liability that he may suffer in consequence; held as one of the liabilities to which J. S. subjected himself was to pay the debt for which the son was arrested, it is an agreement and liable to duty if it exceeds £20, *Wrightley v. Smith*, (1834) 3 L.J. K.B. 116: 5 B. & Ad. 1117.

Trusts—future profits.—An agreement amongst certain persons whereby they agreed to make over a portion of their profits to a "trustee" for use of certain objects mentioned in the agreement and the amount so collected to be held by him for those purposes, is a declaration of trust and the intended fund is not "specified property" within the meaning of s. 3, cl. 13 of Act I of 1879 [now s. 2. (17)]. *Reference under Stamp Act*, s. 46, 11 Mad. 216.

Transfer of parental rights.—When a son was entrusted by the father to another for the son's welfare by a deed with this stipulation that expenses for his son's education would be defrayed by that other, held that the deed is an agreement, *Patil Amtha v. Gorji Keval Chandji*, 1889 P.J. 260.

Warehousing and Insurance.—As regards clauses for warehousing and insurance in an agreement the test is whether the document evidences a transaction independent of agreement; if it is a subsidiary transaction to an agreement for sale, no separate stamp is necessary, *Kyd. v. Mahomed*, 15 Mad. 150 (152).

Agreement for sale.—A contract with the owner by a person who is authorized by it to cut down and remove trees within specified villages within two years, with a further stipulation that trees not cut down and removed within that time would remain the property of the owner, is not a conveyance. The instrument was written upon an impressed stamp of one rupee. The High Court held: "whether it be taken as a sale of tree when cut by the purchaser in which case it would be a memorandum relating to the sale of goods and merchandize or an agreement to allow the contractor to cut and remove the trees on certain conditions it is in my opinion sufficiently stamped either under Article 2 of Schedule II or under Article 5 of Schedule I of Act I of 1879". *Vohra Mohamadali v. Ram Chandra*, 22 Bom. 785: 1897 P.J. 226.

An agreement for the sale of goods with a number of subsidiary stipulations as to warehousing etc. does not require a stamp under the

Indian Stamp Act. *Kyd v. Mahomed*, 15 Mad. 150. See also *The Bombay Company Ltd. v. The National Jute Mills Co. Ltd.*, 39 Cal. 669 : 16 I.C. 153.

Agreement for sale of salt.—An agreement in writing whereby, the vendor agreed to sell salt for a price to be paid at a future date, is exempt from stamp duty, *Reference under Stamp Act*, s. 46 10 Mad. 27.

Agreement to serve.—An agreement to serve is an agreement pure and simple although the agreement contains a term that the party entering into service will have to pay penalty in case of any default, *Madras Railway Company v. Rust*, 14 Mad. 18.

Nokarnama.—A combination of *Nokarnama* (an agreement to serve) and a security bond in which no limit is specified is to be stamped both under Art. 57 of this Act and under cl. (c) of this Article. A simple *Nokarnama* is to be stamped under cl. (c) of this Article, *Nilkantha v. Keshorao*, 78 I.C. 956 : 1924 A.I.R. 408 (Nag.).

Security for due performance of contract.—An agreement between the Secretary of State and salt contractor containing a statement that the latter has deposited in the treasury certain amounts in G. P. Notes for due and faithful performance of his contract and that on completion of the contract to the satisfaction of the Deputy Commissioner, the G. P. Notes would be returned to the contractor, is a deed of mortgage, and the indemnity clause being incidental to all mortgages need not bear a separate stamp, *Reference under Stamp Act*, s. 46, 11 Mad. 39. F.B.

A contract merely stipulating that the contractor will be paid from time to time as the work progressed and the District Engineer will retain 10 per cent. of the money due to cover any compensation for any default on the part of the contractor but without any hypothecation of property, is an agreement, *Reference under Stamp Act*, s. 46, 7 Mad. 280; *Reference to the High Court*, 13 W.R. 353.

Where an abkari licensee executes an agreement to deposit three months' rental with the Collector in cash for due performance of the conditions of the contract *held*, that the *muchalka* is an agreement falling under Art. 5 (c) of the Stamp Act and is to bear stamp of eight annas, *Reference under Stamp Act*, s. 46, 15 Mad. 134.

Arbitration.—*Letters.*—Letters written by parties to the arbitrators authorizing them to arbitrate do not require to be stamped. *Gangaram Kushaba v. Narayan Balaji*, 19 Bom. 32.

Where the defendants wrote a letter of request to the Bengal Chamber of Commerce for the appointment of two arbitrators in accordance with a provision in the contract for reference to arbitration of Bengal Chamber of Commerce, and the issue of an award, on settling forth the details of the buyer's complaints and giving the numbers of the bales—the subject of dispute, *held* that such a letter does not require to be stamped, *Finlay Muir & Co. v. Radhakissen Gopikissen*, 36 Cal. 736 (743) : 3 I.C. 185.

A deed (a letter) appointing an arbitrator in place of one appointed under an agreement to refer to arbitration does not require to be stamped under Art. 5 of the Stamp Act, *Kali Charan Banik v. Mani Mohan Saha Banik*, 28 C.W.N. 871 : 32 I.C. 416 : 1924 A.I.R. 794 (Cal.).

An agreement for sale of goods with stipulations relating to the payments of godown rent and fire insurance as also those relating to reference to arbitration, does not require a stamp under the Indian Stamp Act. "The test is to see whether the document evidences only a transaction of sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of transactions." *Kyd v. Mahomed*, 15 Mad. 150.

A contract for sale of goods and signed by the parties and containing a clause for reference to arbitration in case of dispute arising out of the contract, is not invalid because it bears an eight anna stamp. *Tarachand v. Louis Dreyfus & Co.*, 10 S.L.R. 15 : 35 Ind. Cas. 449.

Reference to arbitration.—"A submission to arbitration is chargeable with an eight anna stamp under Schedule I, Art. 5 of the Indian Stamp Act, II of 1899 as an agreement not otherwise provided for." *Hurdwary Mull v. Ahmed Masaji Saleji*, 13 C.W.N. 63 (68) : 1 Ind. Cas. 371 ; *Baja Bai v. Shivram*, (1883) P.J. 151.

Bought and sold notes : agreements to sell and to refer to arbitration.—A contract for the sale of goods embodied in bought and sold notes, which contains a provision to refer to arbitration, is to be stamped with a duty as a note under Art. 43 only and need not be stamped as an agreement, *The Bombay Company Ltd. v. The National Jute Mills Co., Ltd.*, 39 Cal. 669 : 16 I.C. 153. See also *Bairjnath v. Ahmed Musaji*, 40 Cal. 219 : 17 C.W.N. 395 : 18 I.C. 928.

Calculation of duty.—In calculating the stamp duty payable on an instrument of agreement, the covenant to pay the price in case of breach is to be neglected. *The Collector of Nimar v. Lakhnichandra of Khandwa*, 98 I.C. 631 : 1927 A.I.R. 72 (Nagpur). See also *In the matter of Gajraj Singh*, 9 All. 585 : 1887 All. W.N. 190.

Exemptions.

"Goods and merchandise."—The corresponding words in the English statute are "goods, wares and merchandise." The expression "goods and merchandise" is not an equivalent for movable property, but is borrowed from the English Stamp Act, the language of which is again taken from that of the Statute of Frauds. The cases upon the distinction (often a fine one) between the sale of goods and merchandise in the shape of trees and other produce of land to be cut and removed, and a contract for an interest in land will be found collected in *Benjamin on Sales*, Book I, Part II, Chap. 2. *Vohra Mahamadali v. Ram Chandra*, 22 Bom. 785 (787). See *Nathu Gangaram v. Hansraj Morarji*, 9 Bom. L.R. 119.

An agreement signed by the executant and attested by two witnesses in a deed (called *Kabuliat*) whereby it was agreed to purchase standing timber in a jungle for consideration to be paid within certain time and in default the owner of the timber would have the right to realize the amount from him, with a further stipulation that the purchaser would cut and remove the timber within a year, is an agreement or a memorandum of an agreement for or relating to the sale of goods or merchandise coming under the exemption in Art. 5 of the Stamp Act, as the primary object was to evidence the transaction of the sale of goods. The mere fact that provision was made for the payment of the price or removal of the goods within a certain time would not make it an agreement or memorandum of an agreement other than one relating to the sale of goods or merchandise within the meaning of the exemptions (in so far as it related to the sale of standing timber to be cut and removed, which is under the law movable property). *In the matter of Mahant Raj Balamgir* (on Reference by the Junior Secretary, Board of Revenue, U. P.), 1931 A.L.J. 608 : F.B. : 133 I.C. 157 : 1931 A.I.R. 392 (All.).

— The words “goods, wares and merchandise” have been construed to mean all tangible movable property (See *Blackburn on sales*), *Lee v. Griffin*, 1 B. & S. 272 : 30 L.J.Q.B. 252.

A contract to supply a house with water by means of pipes to be laid, is an agreement relating to the sale of goods, *West Middlesex Water Works v. Suwer Kropp*, 4 C. & P. 87 : M. & M. 408.

A contract for work and labour does not come within this exemption, *Fielder v. Ray*, 4 C. & P. 61.

An agreement to supply fish in consideration of an advance paid, does not come within the exemption, *Maria Jacob Rodrigues v. Peter Fernando*, 19 M.L.J. 35 : 5 M.L.T. 135 : 2 I.C. 481 F.B.

An agreement to sell salt was held to come under this exemption, *Reference*, 10 Mad. 27 F.B.

An agreement to deliver grain does not come under this exemption see cases under heading “Agreement to deliver grain”, *supra* under this Article.

“Agreement for sale of goods.”—An instrument acknowledging the receipt of money and in consideration of this payment an agreement to sell paddy at the harvest time at a certain rate, is not an agreement “for or relating to the sale of goods exclusively” and not therefore exempt under clause (a) of Art. 5. It is more than an agreement for sale of goods and is an acknowledgment for debt, *In re Revenue Stamp case No. 19 of 1909-10 of the Collector*, 5 L. B. R. 157 : 5 Ind. Cas. 986 F.B. : *Finlay Muir & Co. v. Radhakissen Gopikissen*, 36 Cal. 736 : 3 I.C. 185 (Sale of dhoties). See also *Ma Thin Za v. K. K. R. M. Veera Kalai*, 131 I. C. 503 : 1931 A. I. R. 192 (Ran.).

An agreement for the sale of goods between two merchants becomes a bond when attested by two witnesses ; but an agreement

contained in a broker's note must be stamped under Art. 43. *In re Ralli Brothers*, 5 Bom. L.R. 234.

Lease.—An agreement to rent pasture lands, is a lease and not an agreement for the sale of goods. *In re Harmasji Irani*, 13 Bom. 87.

Subsidiary clauses.—An agreement for the sale of goods with stipulation relating to payment of godown rent and the fire insurance and reference to arbitration, does not require a stamp because the latter clauses are subsidiary stipulations. *Kyd v. Mahomed*, 15 Mad. 150 F.B.

Exchange.—An instrument containing an agreement to exchange cotton seeds received is not in exchange for a price and therefore not a sale and requires to be stamped with a stamp of eight annas under clause (a) of Art. 5. *Samaratmal Uttamchand v. Govind*, 25 Bom. 696 : 3 Bom. L.R. 384. See also *Volkart Brothers v. Vettivelu Nadan*, 11 Mad. 459 (467); *The Queen Empress v. Apparu*, 9 Mad. 141.

Description of Instrument.	Proper Stamp-duty.
<p>Agreement to Lease. See LEASE (No. 35).</p> <p>6. Agreement relating to deposit of Title-deeds, Pawn or pledge, that is to say, any instrument evidencing an agreement relating to—</p> <p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p> <p>(2) the pawn or pledge of movable property,</p> <p>where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—</p> <p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—</p>	<p>The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.</p>

Description of Instrument.				Proper Stamp-duty.								
				<i>If drawn singly.</i>	<i>If drawn in set of two, for each part of the set.</i>	<i>If drawn in set of three, for each part of the set.</i>						
(i) when the amount of the loan or debt does not exceed ... Rs. 200				Rs. AS. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	
				0 4 6	0 3 0	0 1 6	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0	
(ii) when it exceeds Rs. 200 but does not exceed Rs. 400				0 9 0	0 4 6	0 3 0	0 3 0	0 8 0	0 8 0	0 8 0	0 8 0	
Ditto	400	ditto	600	0 13 6	0 7 6	0 4 6	0 4 6	0 12 0	0 12 0	0 12 0	0 12 0	
Ditto	600	ditto	800	1 2 0	0 9 0	0 6 0	0 6 0	1 0 0	1 0 0	1 0 0	1 0 0	
Ditto	800	ditto	1,000	1 6 6	0 12 0	0 7 6	0 7 6	1 4 0	1 4 0	1 4 0	1 4 0	
Ditto	1,000	ditto	1,200	1 11 0	0 13 6	0 9 0	0 9 0	1 8 0	1 8 0	1 8 0	1 8 0	
Ditto	1,200	ditto	1,600	2 4 0	1 2 0	0 12 0	0 12 0	2 0 0	2 0 0	2 0 0	2 0 0	
Ditto	1,600	ditto	2,500	3 6 0	1 11 0	1 2 0	1 2 0	3 0 0	3 0 0	3 0 0	3 0 0	
Ditto	2,500	ditto	5,000	6 12 0	3 6 0	2 4 0	2 4 0	6 0 0	6 0 0	6 0 0	6 0 0	
Ditto	5,000	ditto	7,500	{ 10 0 0 10 2 0 in Mad. & Punjab. }		5 1 0	3 6 0	9 0 0	9 0 0	9 0 0	9 0 0	
Ditto	7,500	ditto	10,000	13 8 0	6 12 0	4 8 0	4 8 0	12 0 0	12 0 0	12 0 0	12 0 0	
Ditto	10,000	ditto	15,000	20 4 0	10 2 0	6 12 0	6 12 0	18 0 0	18 0 0	18 0 0	18 0 0	
Ditto	15,000	ditto	20,000	27 0 0	13 8 0	9 0 0	9 0 0	24 0 0	24 0 0	24 0 0	24 0 0	
Ditto	20,000	ditto	25,000	33 12 0	16 14 0	11 4 0	11 4 0	30 0 0	30 0 0	30 0 0	30 0 0	
Ditto	25,000	ditto	30,000	40 8 0	20 4 0	13 8 0	13 8 0	36 0 0	36 0 0	36 0 0	36 0 0	
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000				13 8 0	6 12 0	4 8 0	4 8 0	12 0 0	12 0 0	12 0 0	12 0 0	
				Bengal, Madras, Punjab.				U. P.]				
(b) if such loan or debt is repayable not more than three months from the date of such instrument.				Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.								
				[Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured—in Bengal, Madras and Punjab.								
				Half the duty payable on a loan or debt under cl. (a) for the amount secured—in U.P.]								
Exemptions.												
Instrument of pawn or pledge of goods if unattested.												

NOTES.

See Art. 29 Sch. I of Act I of 1879, Art. 21 Sch. II of Act XVIII of 1869, Art. 13 Sch. A of Act X of 1862.

This Article deals with (i) an equitable mortgage by deposit of title deeds ; and (ii) pledge. A mortgage comes under Articles 40 and 41.

Amendments.—This Article is substituted for the original Article by s. 8 (I) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Reduction of duty.—*Duty reduced from 1st June, 1932 in Burma.*—

Clause (a)—Duty reduced to the amount of duty payable under cl. (a) of Article 13 of the schedule as amended in Burma on a bill of exchange for the amount secured.

Clause (b)—Duty reduced to half the amount of duty payable under clause (a) of Article 13 of the schedule as amended in Burma on a bill of exchange for the amount secured—(Notification No. 4, dated 2-7-32 in the Gazette of India).

Remission of duty.—U. P.—The duty chargeable under Art. 6 of Sch. I of the Indian Stamp Act (II of 1899) as amended by the United Provinces Stamp (Amendment) Act, 1932 (U. P. Act IV of 1932), on instruments of pawn or pledge of agricultural produce if unattested, has been remitted (Notification No. 9, dated 26-11-32 in the Gazette of India).

Stamp to be used.—Impressed stamp—Rules 6 and 10 (i) ; if foreign instrument—Rule 12 ; if the duty leviable be one anna, two annas or four annas then Rule 16.

Application.—In *Queen Empress v Debendra Krishna Mitter*, 27 Cal. 587 : 4 C.W.N. 524 it was held that the Article applies only to an agreement for repayment of a loan made at the time of execution and not to an assignment of a mortgage, but the Article has since been amended by Act XV of 1904 which brings a loan to be advanced within this Article.

Equitable mortgage.—The most common class of cases to which the Art. 29(now Art. 6) would apply would be that of an ordinary equitable mortgage by deposit of the deeds, accompanied with a memorandum of charge. *Queen Empress v. Debenutra Krishna Mitter*, 27 Cal. 587 (593) 4 C.W.N. 524.

A letter stating the terms on which an equitable mortgage by deposit of title deeds was to be executed, is to be stamped as an agreement *if it did not secure the amount*, *Mulhia Chetty v. Kothandaramaswamy*, 31 M.L.J. 347 : 4 L.W. 472 : (1916) M.W.N. 221 : 35 Ind. Cas. 864.

Pawn or pledge.—The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor", the bailee is called the "pawnee", S. 172 of the *Contract Act*. Pawn is a security intermediate between a simple loan and a mortgage whereby possession in the property pawned is with the creditor. It is not an equitable mortgage, *Lala Jyoti Prakash v. Lala Mukti Prakash*, 22 C.W.N. 297 (301). This can only be of movable property.

Art. 29 (now Art. 6) applies to cases where movable property is pledged together with an agreement securing the repayment of a loan. *In the matter of Ko Shway Aung v. Strang Steel & Co.*, 21 Cal. 241 (244). *Reference under Stamp Act*, s. 46; 8 Mad. 104 (107).

When moneys are advanced to importers for the purpose of their trade and the goods are placed in the godown of the lenders, it would be an exceedingly likely course of business that the goods should be regarded as security for the advances and that the lenders should take charge of or at any rate keep control over the realization of the goods and should reduce the advances out of the proceeds when received. *Firm Tejpal Jamna Das v. Ernest V. David*, 32 C.W.N. 1146 P.C. : 48 C. L. J. 415 : 28 L. W. 204 : 111 I. C. 240 : 1928 A. I. R. 218 (P.C.).

Description of Instrument.	Proper Stamp-duty.
7. Appointment in execution of a power , whether of trustees or of property, movable or immovable, where made by any writing not being a will.	<p>Fifteen rupees.</p> <p>[Rs. 25—in Bengal, Madras and Punjab ;</p> <p>Rs. 15 for trustees and Rs. 30 for other property—in Bombay and Burma ;</p> <p>Rs. 15 if the value of the property does not exceed Rs. 1000 and Rs. 25 in other cases—in U. P.]</p>

NOTES.

See Art. 6, Sch. I of Act I of 1879 and Art. 35, Sch. II of Act XVIII of 1869.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (i).

Power of appointment.—See s. 56 of the Indian Succession Act, X of 1865 (now sec. 69 of Act XXXIX of 1925). See also *Bai Motivahu v. Bai Mamubai*, 21 Bom. 709.

Punchnama.—Where the founder of a religious endowment makes a will providing for removal of mohants by a *punch* of the class of sanyasis to which the mohant belongs, the High Court held that “the will not only gave the *punch* the power to enquire into the misconduct of a shebait, and to remove him from the office of shebait, but also to appoint a new shebait, at any rate, impliedly and that the *punch* appointed the plaintiff as shebait according to the customary rules of the community under the powers conferred by the will though not clearly so stated in the *punchnama*.” The party was ordered to pay stamp and penalty. *Mohesh Chandra Roy v. Gossain Ganpat Gir*, 23 C.W.N. 401 (412) : 51 I.C. 884.

Charitable institutions—power to executor.—The testator left two lakhs of Rupees for the charitable purpose of establishing and

maintaining such charitable institution as the executors will think fit. The executors drew up a trust deed whereby the above sum formed a part of the amount settled on an orphanage to be called "*The Abdulla Dawood Bowla Mahomedan Female Orphanage*" and the amount was conveyed to the trustees; held that the instrument relates to property already held upon a general charitable trust. The trustees in appropriating the money to the trust allowed by the instrument in question are exercising the power of appointment conferred upon them by the will. The disposition was by the testator by the will and not by the trustees appointed by this instrument. The instrument *qua* the Bowla fund is an instrument of appointment chargeable with a duty of Rs. 15 under Schedule I, Art. 7. *In re Abdulla Haji Dawood Bowla Orphanage*, 35 Bom. 444 (447, 448): 13 Bom. L. R. 646: 11 Ind. Cas. 982.

Description of Instrument.	Proper Stamp-duty.
8. Appraisement or Valuation made otherwise than under an order of the court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000	The same duty as a Bond (No. 15) for such amount.
	[The same duty as a Bottomry Bond (No. 16) for such amount—in Bengal, Madras and Punjab].
(b) in any other case	Five rupees.
	[Duty raised to Rs. 7-8—in Bengal, Madras, U. P. and Burma, and to Rs. 10—in Bombay and Punjab].
<i>Exemptions.</i>	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	

NOTES.

See Art. 7, Schedule I of Act I of 1879 and Art. 21, Schedule I of Act XVIII of 1869. See s. 24 of the Stamp Act, 1891 (54 & 55 Vict. C. 39).

Exemption.—See Art. 3, Schedule II of Act I of 1879.

Stamp to be used.—Impressed stamp—Rule 6.

Appraisement.—*For exemption (b)* see ss. 69 and 70 of the Bengal Tenancy Act, (B. C. Act VIII of 1885). Exemption (a) is based upon *Atkinson v. Fell*, 5 M. & S. 240.

A valuation made for mere information of employer and not binding upon them, does not require a stamp. A subsequent use of the instrument for a purpose for which duties can be charged does not make the instrument a dutiable one, *Jackson v. Stopherd*, 2 C. & M. 361 : 4 Tyr. 530.

Description of Instrument.	Proper Stamp-duty.
<p>9. Apprenticeship-deed, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being ARTICLES OF CLERKSHIP (No. 11).</p> <p><i>Exemption.</i></p> <p>Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.</p>	<p>Five rupees.</p> <p>[Duty raised to Rs. 7-8 in Bengal, Madras, U. P. and Burma and to Rs. 10 in Bombay].</p>

NOTES.

See Art. 31, Schedule I of Act I of 1879. For exemption see Art. 12 (c) Schedule II of Act I of 1879.

Stamp to be used.—Impressed stamp—Rule 6.

Apprentices.—An apprentice is a young person bound by indenture to a tradesman or mechanic, who undertakes to teach him his trade. There are also agricultural apprentices, factory apprentices, and apprentices to the sea service. See also Apprentices Act (Act XIX of 1850) s. 4. This Article includes the services of a clerk to learn any profession, trade or employment.

See s. 25 of the Stamp Act, 1891 (54 and 55 vict c. 39) which runs as follows:—

“Every writing relating to the service or tuition of any apprentice, clerk, or servant placed with any master to learn any profession, trade or employment (except articles of clerkship to a solicitor or law agent or writer to the signet) is to be deemed an instrument of apprenticeship.

Exemption—public charity.—The term “public charity” is not defined anywhere. “Charity” in its legal sense comprises four principal divisions:—trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion and trusts for other purposes not falling under any of the preceding heads.—*Per Lord MacNaughten in Commissioners for special purposes of Income Tax v. Pemsel*, (1891) A. C. 531. See also *Jamshedji v. Soonabai*, 33 Bom. 122: 10 Bom. L.R. 417: 1 Ind. Cas. 834.

Description of Instrument.	Proper Stamp-duty.
<p>10. Articles of Association of a Company.</p> <p><i>Exemption.</i></p> <p>Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882 (now Act VII of 1913).</p> <p>See also MEMORANDUM OF ASSOCIATION OF A COMPANY (No. 39).</p>	<p>Twenty-five rupees.</p> <p>[Bengal, Madras & U.P.—Rupees fifty.</p> <p>Bombay and Burma—</p> <p>(a) where the company has no share capital or the nominal share capital does not exceed Rs. 2,500—Twenty five Rupees.</p> <p>(b) where the nominal share capital exceeds Rs. 2,500, but does not exceed Rs. 1,00,000—Fifty Rupees.</p> <p>(c) where the nominal share capital exceeds Rs. 1,00,000—One hundred Rupees.</p> <p>Punjab—</p> <p>(a) when the authorised capital of the company does not exceed Rs. 1,00,000—Twenty five Rupees.</p> <p>(b) in other cases—Fifty Rupees.]</p>

NOTES.

See Art. 8, Schedule I of Act I of 1879 and Art. 33 Schedule II of Act XVIII of 1869.

For exemption see Art. 2 (2), Schedule II of Act I of 1879.

The present Companies Act is Act 7 of 1913.

Stamp to be used.—Impressed label—Rules 6 and 10 (i); Foreign instrument—Rule 12.

Articles of association.—See Companies Act (VII of 1913). Where a Company limited by shares passed a special resolution and drew up new 'article of association' in supersession of the former 'articles of association' and produced the same before the Registrar of Joint Stock Companies who impounded it, *held* that as the Companies Act did not contemplate any such thing as the *new articles of association*, the document was nothing more than a record of a resolution, hence does not require to be stamped. *In the matter of the New Egerton Woollen Mills*, 22 All. 131 : (1900) 20 All. W.N. 15.

Description of Instrument.	Proper Stamp-duty.
• 11. Articles of Clerkship or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.	Two hundred and fifty rupees. [<i>Three hundred and seventy-five rupees</i> — <i>in Madras.</i>]

NOTES.

This article does not apply to any Articles of Clerkship other than with attorneys. To those cases Article 9 of this Schedule applies.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (i).

Description of Instrument.	Proper Stamp-duty.
Assignment. See CONVEYANCE (No. 23), TRANSFER (No. 62), and TRANSFER OF LEASE (No. 63) as the case may be. Attorney. See ENTRY AS AN ATTORNEY (No. 30) and POWER OF ATTORNEY (No. 48). Authority to Adopt. See ADOPTION-DEED (No. 3).	
12. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	[The same duty as a Bond (No. 15) for the amount or value of the property to which the award relates as set forth in such award subject to a maximum of fifty rupees—in Burma; and twenty rupees—in Bombay].

Description of Instrument.	Proper Stamp-duty.
(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for such amount.
(b) in any other case	[<i>Madras—the same duty as a Bottomry Bond (No. 16) for such amount.</i>]
[<i>(b) if it exceeds Rs. 1000 but does not exceed Rs. 5000</i>	Five rupees.
and for any additional Rs. 1000 or part thereof in excess of Rs. 5,000	Rs. 7-8 in Bengal, Punjab and U.P. and Rs. 10 in Madras.
[In U.P.—	Eight annas subject to a maximum of Rs. 50—in Bengal, Punjab and Madras].
(c) in any other case	Ten rupees.]
In Bombay—the clauses (a) and (b) are repealed.	
<i>Exemption.</i>	
Award under the Bombay District Municipal Act, 1873, section 81 (now Sec. 160 of Bom. Act III of 1901) or the Bombay Hereditary Offices Act, III of 1874, section 18, [or the United Provinces Municipalities Act, 1916, Section 324 (1) or the United Provinces District Boards Act, 1922, Section 190 (1)]—added in U.P.]	

NOTES.

See Art. 10, Schedule I of Act I of 1879. For exemption see Art. 6, Schedule II of Act I of 1879.

An award is liable to stamp duty, but it must be made on a reference made otherwise than by an order of the court, in the course of a suit.

Stamp to be used.—Impressed Stamp—Rules 6 and 10 (ii).

Part of award.—Where the award recites a contract for one purpose only, viz., to earmark the dispute referred to arbitration, the contract does not thereby become part of the award, *The Firm of Saleh Mahomed Umer Dussal v. Seth Nathoomal Kessumal*, 54 I.A. 427: 21 S.L.R. 101: 29 Bom. L.R. 1150: 31 C.W.N. 1027: 46 C.L.J. 9: 53 M.L.J. 18: 104 I.C. 476: 1927 A.I.R. 164 P.C.

Nature of the contract.—A clause to refer to arbitration in a contract is an agreement, hence must be stamped as an agreement not otherwise provided for. *Bajinath v. Ahmed Musaji Salji*, 40

Cal. 219 (224, 229): 17 C.W.N. 395; 18 I.C. 978; *The Bombay Mills Ltd. v. The National Jute Mills Co., Ltd.*, 39 Cal. 669; 16 I.C. 153; *Sm. Bagabai v. Sheo Ram*, 1883 P.J. 151.

Submission to arbitration: to the Arbitrator.—Letters written by parties authorizing arbitrators to arbitrate between them do not require to be stamped, *Gangaram Kushaba Rangole v. Narayan Babaji Rangole*, 19 Bom. 32. See also cases under *Agreement-arbitration Supra*.

Before filing an award and passing a decree based on it, it is necessary for the judge to see that a proper and duly stamped award is before him. Unless and until an award is engrossed upon a stamp paper it has no validity and cannot operate as an award. An unstamped award has no valid existence, so to say, and the Court could not be justified in looking at it, far less could it pass a decree in terms thereof. The executant of the award being the arbitrator, under s. 29 (g) of the Indian Stamp Act, it is his duty primarily to direct the parties to provide him with necessary stamp and to see that he did not deliver or publish his award on a plain paper, and thus save himself from the blame attaching him of having evaded the stamp law. *Ram Kumar v. Kushal Chand Ganesh Das and others*, 1928 A.I.R. 166 (Nag.): 107 I.C. 668.

An award giving an annuity should be stamped under s. 25 (c) of the Stamp Act I of 1879 [also s. 25 (c) of the present Act]. *Reference under Stamp Act*, (1896) 16 All. W.N. 197.

Award—partition.—An award directing partition of property becomes an instrument of partition when signed by parties by way of assent and should be stamped accordingly, *Amarsi v. Dayal*, 9 Bom. 50; *Tek Lal Singh v. Sripati Chowdhury*, 18 C.W.N. 475; *Syed Mahammad Hameed v. Syed Manzur Hussain*, 69 I.C. 807; 1922 A.I.R. 283 (Allahabad); *Contra, Gulab Singh v. Mohar Singh*, 160 P.L.R. 1906. See also other cases under s. 2 (15) *supra*.

Award—unstamped.—An award made in a proceeding under Article 20, Schedule II of the Code of Civil Procedure requires a stamp, and an unstamped award may be admitted in evidence on payment of penalty and stamp duty, *Gowardhan Das v. Keshoram*, 181 P.W.R. 1913; 66 P.R. 1913; 290 P.L.R. 1913; 20 Ind. Cas. 491.

Copy of an award.—If the unstamped award be lost then a copy of the same cannot be admitted in evidence as no penalty and stamp duty can be paid on a copy of an unstamped document, *Gopi Reddi v. Mahanandi Reddi*, 12 Mad. 331.

Validation.—An award may be validated on payment of the stamp duty. The stamp law casts upon the arbitrator no obligation to stamp the award. He is only to inform the parties of the making of the award. The award is complete as soon as it is made, *Anantram v. Lala Murlidhar*, 78 I.C. 194; 1924 A.I.R. 204 (N.).

Remission of duty.—The Governor General in Council has been pleased to remit the duty chargeable under Article 12 of Schedule I to the Indian Stamp Act, 1899 on the award of arbitrators in all disputes

to which Co-operative Societies in the Madras Presidency are parties.
(Published in the G. of India Gazette, Part I, Page 545, dated June 2, 1928).

Description of Instrument.	Proper Stamp-duty.		
13. Bill of Exchange [as defined by s. 2 (2)] not being a BOND , bank-note or currency-note—			
[(a) <i>Repealed by the Indian Finance Act, V of 1927</i>].			
(b) where payable otherwise than on demand, but not more than one year after date or sight—	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
if the amount of the bill or note does not exceed Rs. 200	0 3 0	0 2 0	0 1 0
if it exceeds Rs. 200 and does not exceed Rs. 400	0 6 0	0 3 0	0 2 0
Ditto 400 ditto 600	0 9 0	0 5 0	0 3 0
Ditto 600 ditto 800	0 12 0	0 6 0	0 4 0
Ditto 800 ditto 1,000	0 15 0	0 8 0	0 5 0
Ditto 1,000 ditto 1,200	1 2 0	0 9 0	0 6 0
Ditto 1,200 ditto 1,600	1 8 0	0 12 0	0 8 0
Ditto 1,600 ditto 2,500	2 4 0	1 2 0	0 12 0
Ditto 2,500 ditto 5,000	4 8 0	2 4 0	1 8 0
Ditto 5,000 ditto 7,500	6 12 0	3 6 0	2 4 0
Ditto 7,500 ditto 10,000	9 0 0	4 8 0	3 0 0
Ditto 10,000 ditto 15,000	13 8 0	6 12 0	4 8 0
Ditto 15,000 ditto 20,000	18 0 0	9 0 0	6 0 0
Ditto 20,000 ditto 25,000	22 8 0	11 4 0	7 8 0
Ditto 25,000 ditto 30,000	27 0 0	13 8 0	9 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.	9 0 0	4 8 0	3 0 0
(c) where payable at more than one year after date or sight.	The same duty as a Bond (No. 15) for the same amount.		

NOTES.

See Art. 11, Schedule I of Act I of 1879, and Art. 1, Schedule I and Art. 1 Schedule II of Act XVIII of 1869.

Amendment.—Cl. (b) was substituted for the original clause by s. 6 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

In this Article, the word, figure and brackets "and (3)" which occurred after the words "as defined by sec. 2 (2)" and the letter, brackets and words "(a) where payable on demand," together with the entry "one anna" in the second column against those words have been omitted by the Finance Act, 1927 [Act V of 1927 sec. 5 (9)].

Stamp to be used.—(b) and (c)—If drawn in sets and the duty on each part is not over one anna, adhesive postage and revenue stamps—rules 13 (a) and 16; for higher—Impressed stamps—rules 6 and 10 (ii); Hundis—rule 4. Bills of Exchange—drawn out of British India, s. 11.

Determination of nature of instrument.—In determining whether a particular instrument is sufficiently stamped, the court should only look at it as it stands. *Sakharan Shankar v. Ramchandra*, 27 Bom. 279 : 5 Bom. L.R. 28.

•• **Landlord and Tenant.**—An instrument whereby the tenants agree with the landlord that the landlord will have sole right over the whole crop until the rent is paid, and the tenants agree not to alienate or otherwise deal with the crop without the consent of the landlord until such payment is made, is an agreement relating to the hypothecation of movable property for future debt and therefore liable to stamp duty as on a bill of exchange under Art. 13 (b), *Maug Mal v. Maung San Hun*, 44 I.C. 109.

Bill of Exchange written on several pieces of stamp paper.—Several sheets of stamped paper may be joined together subject to the proviso that a portion of the instrument shall be written on each sheet so used, *Sarada Nath v. Gobinda Chandra*, 23 C.W.N. 524 : 29 C.L.J. 305 : 51 I.C. 88.

Duty on second of Exchange.—A second of Exchange does not require a stamp when the 1st of Exchange has been duly stamped, *In re The Netherland Trading Society*, 4 L.B.R. 320 F.B.

Payable otherwise than on demand.—A Bill of Exchange for Rs. 500, payable otherwise than on demand, is to be stamped with impressed stamp, *Radhakant Shaha v. Abhoy churan Mitter*, 8 Cal. 721 : 11 C.L.R. 310.

A hundi for Rs. 380 cannot be stamped with an adhesive stamp, because the stamp necessary is more than one anna, *Devaji v. Ram Kristniak*, 2 Mad. 173.

A document whereby the executant undertakes to make payments by instalments specified in the instrument and stipulates that on failure, the amounts already paid will be forfeited, is not a promissory note but an agreement, *T. Kalchi Rowther v. R. Naina Mohamed*, 8 L.B.R. 155 : 28 I.C. 300.

Description of Instrument.	Proper Stamp-duty.
<p>14. Bill of lading.—(including a through bill of lading).</p> <p><i>Exemptions.</i></p> <p>(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889, and are to be delivered at another place within the limits of the same port.</p> <p>(b) Bill of lading when executed out of British India and relating to property to be delivered in British India.</p>	<p>Four annas. [<i>In Bengal, Madras, U.P and Burma—Six annas; In Bombay and Punjab—Eight annas</i>].</p> <p><i>N. B.</i>—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.</p>

NOTES.

See Art. 12, Schedule I of Act I of 1879, and Art. 9, Schedule II of Act XVIII of 1869.

Exemption (a) which was Art. 7, Schedule II of Act I of 1879 and (b) which was Art. 3, Schedule II of Act I of 1879 were introduced in 1895.

Bill of lading.—See definition, s. 2 (4) *supra*.

Indian Ports Act, 1889 is Act X of 1889. The present Act is Act XV of 1908.

Remission of duty.—See paragraph 47 in the Finance Department No. 3616. *Exc. infra*.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii) but in places where the duty has not been enhanced a postage stamp or a stamp both for postage and revenue may be used—Rule 16.

Description of Instrument.	Proper Stamp-duty									
	Duty elsewhere	Duty in Bengal	Duty in U. P.	Duty in Madras	Duty in Punjab	Duty in Burma	Duty in Bombay			
15. Bond. [as defined by section 2 (5)] not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870,—										
where the amount or value secured does not exceed Rs. 10	0 2 0	0 2 0	0 2 0	0 2 0	0 2 0	0 2 0	0 2 0			
where it exceeds Rs. 10 and does not exceed Rs. 50	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0			
Ditto 50	0 8 0	0 8 0	0 8 0	0 8 0	0 8 0	0 8 0	0 8 0			
Ditto 100	1 0 0	1 0 0	1 0 0	1 4 0	1 0 0	1 4 0	1 0 0			
Ditto 200	1 8 0	1 14 0	1 8 0	1 14 0	1 14 0	1 14 0	1 14 0			
Ditto 300	2 0 0	2 8 0	2 0 0	2 8 0	2 8 0	2 8 0	2 8 0			
Ditto 400	2 8 0	3 2 0	2 8 0	3 2 0	3 2 0	3 2 0	3 2 0			
Ditto 500	3 0 0	4 8 0	3 4 0	4 8 0	4 8 0	4 8 0	4 8 0			
Ditto 600	3 8 0	5 4 0	4 0 0	5 4 0	5 4 0	5 4 0	5 4 0			
Ditto 700	4 0 0	6 12 0	4 12 0	6 12 0	6 12 0	6 12 0	6 12 0			
Ditto 800	4 8 0	7 8 0	5 8 0	7 8 0	7 8 0	7 8 0	7 8 0			
Ditto 900	5 0 0	8 0 0	6 4 0	8 0 0	8 0 0	8 0 0	8 0 0			
Ditto 1,000										
and for every Rs. 500 or part thereof in excess of Rs. 1,000;	2 8 0	3 12 0	3 12 0	3 12 0	3 12 0	3 12 0	3 12 0			

See ADMINISTRATION-BOND (No. 2), BOTTOMRY BOND (No. 16), CUSTOMS BOND (No. 26), INDEMNITY-BOND (No. 34), RESPONSENTIA BOND (No. 56), SECURITY BOND (No. 57).

Exemptions.

Bond, when executed by—

- (a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;
- (b) any person for the purpose of guaranteeing that the local income, derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

NOTES.

See Art. 13, Schedule I of Act I of 1879 and Art. 5, Schedule I of Act XVIII of 1869.

For *Exemption* see Art. 8, Schedule II of Act I of 1879.

Bengal Irrigation Act, 1876 is Beng. Act III of 1876.

Amendments.—By Act VI of 1889, s. 18(4) the words “or by the Court Fees Act, 1870” were added to this Article.

Bond.—See definition under s. 2 (5) *supra* and the cases collected thereunder.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Scope.—Article 15 is of a residuary character, intended for bonds which cannot be assigned to any other of the Articles of the Stamp Act and are not provided for by the Court Fees Act. *Reference*, 53 Cal. 101 F.B. : 29 C.W.N. 851 : 42 C.L.J. 5 : 89 I.C. 289 : 1925 A.I.R. 906 (Cal.) F.B.

The Court Fees Act, 1870 does not apply to the Presidency Towns of Calcutta, Bombay and Madras (partly), hence the reservation as to Court Fees Act does not apply to those towns.

Construction—amount or value secured—“The amount secured by an instrument is the value of the paddy agreed to be made over to the creditor, as fixed by the instrument itself.” Otherwise it should be impossible for the parties to fix the amount to be secured for the purpose of determining what stamp is to be paid. *Bhairah-Chandra Chowdhury v. Alek Jan*, 13 Cal. 268 ; *Dhanji v. Vohra Bhairji*, 1883 P.J. 14.

Instalment bonds.—Where Rs. 100 was borrowed and it was agreed that the obligor should pay twice the amount in eight years according to kists as agreed, *held* that the amount secured is Rs. 200. *Sambhu Chandra Bepari v. Krishna Charan Bepari*, 26 Cal. 179.

Interest.—Duty is not to be charged upon interest. See s. 23 of this Act and the cases noted there.

Principle of assessment.—*Bond with a penal clause.*—Where a person borrowed money from another and executed an instrument in which it was stated that the money borrowed was to be treated as an earnest money for supply of a certain quantity of sugar to the lender and as a collateral security the borrower hypothecated the sugar cane crop in his field without fixing any value of the crop, *held*, as to the 1st part it is a “bond” as defined in the Stamp Act and as to the 2nd part it is a mortgage, and that the highest fee of the two items is to be paid on the instrument. *In the matter of Gajraj Singh*, 9 All. 585 : (1887) All. W.N. 190.

Agreement to deliver grain after receipt of earnest money and attested by two witnesses.—Where the contract was to sell paddy of a certain quantity together with a further agreement that in case of

breach the party responsible for the breach shall lawfully stand the loss as well as the expenses, *held* that the instrument containing the contract is not a bond, *The Collector Rangoon v. Maung Aung Ba*, 9 Bur. L.T. 111 : 8 L.B.R. 302 : 33 I.C. 920.

Where a tenant agreed to take land for the purpose of cultivation at a certain rent payable in kind for one year and in the same instrument it was also agreed that the tenant would pay the balance of the rent in kind for the past year, *held* that the instrument so far as it is an agreement to cultivate is exempt from duty ; but so far as it relates to the stipulation to pay rent for the past year, it is a bond, *Ramchandra v. Dhondoo*, 7 Bom. L.R. 929.

Other bonds.—For other kinds of bonds included in this schedule, see Arts. 2, 16, 26, 34, 40, 41, 56 and 57.

Court Fees Act.—See s. 19, Cl. XV and Sch. II, Art. 6 of that Act.

Description of Instrument.	Proper Stamp-duty.
16. Bottomry Bond , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship, to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 15) for the same amount.

Local Amendments.—The duty payable has been raised in Bengal, Madras and Punjab thus—

Description of Instrument.	Proper Stamp-duty.
where the amount or value secured does not exceed Rs. 10 ;	Three annas.
where it exceeds Rs. 10 and does not exceed Rs. 50 ;	Six annas.
where it exceeds Rs. 50 and does not exceed Rs. 100 ;	Twelve annas.
where it exceeds Rs. 100 and does not exceed Rs. 200 ;	One rupee eight annas.
where it exceeds Rs. 200 and does not exceed Rs. 300 ;	Two rupees four annas.
where it exceeds Rs. 300 and does not exceed Rs. 400 ;	Three rupees.
where it exceeds Rs. 400 and does not exceed Rs. 500 ;	Three rupees twelve annas.
where it exceeds Rs. 500 and does not exceed Rs. 600 ;	Four rupees eight annas.
where it exceeds Rs. 600 and does not exceed Rs. 700 ;	Five rupees four annas.

Description of Instrument.	Proper Stamp-duty.
where it exceeds Rs. 700 and does not exceed Rs. 800 ;	Six rupees.
where it exceeds Rs. 800 and does not exceed Rs. 900 ;	Six rupees twelve annas.
where it exceeds Rs. 900 and does not exceed Rs. 1,000 ;	Seven rupees eight annas.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Three rupees twelve annas.

NOTES.

See Art. 15, Schedule I of Act I of 1879 ; s. 3 (6) and Art. 6, Schedule I of Act XVIII of 1869 ; Sch. A, Art. 14 of Act 10 of 1862 and Sch. A, Art. 9 of Act 36 of 1860.

A bottomry bond is so named from the bottom or keel of a ship. This Article appears to be confined to a bond executed by the master only.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Nature of a Bottomry bond.—Both owner and master of a vessel can execute a bond. (See *Duke of Bedford*, 2 Hag. Adm. 294).

It is certainly the vital principle of this species of bondes (bottomry) that they shall have been taken where the owner was known to have no credit, no resources for obtaining supplies, *Nelson*, 1 Hag. Adm. 169 (175).

"A bottomry bond is a contract in the nature of a mortgage, or as it is termed, hypothecation of a ship as a security for money lent or expended upon her without reserving any claim against the owner in person, and usually made by the master abroad stipulating that the money advanced, together with the agreed premium, shall be paid within a stipulated number of days after the safe arrival of the vessel at a named port of discharge in England, or any port within the Admiralty jurisdiction.—*Tomlins*."

The master of a ship has, as an agent of necessity, under certain circumstances, authority to pledge or hypothecates the ship and its cargo as security for the money advanced to be expended upon her. The contract is called "bottomry" and the bond a "Bottomry bond".

Where the cargo is only pledged it is a 'Respondentia bond.'

See also sec. 3, Proviso 2 of this Act under which no duty is leviable on deeds of transfer of ships registered under the Acts of 1838 and 1841.

Where the owner undertook a personal liability which was to subsist for a period of about five months from the date of the bond, held that this circumstance alone is fatal to the contention that it is a bottomry bond. *Asan Kutba Sahib Mercoyar v. Ramanathan Chetti*, 22 Mad. 26 : 8 M.L.J. 159.

Description of Instrument.	Proper Stamp-duty.
<p>17. Cancellation—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.</p> <p><i>See also</i> RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58-B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No. 64-B).</p>	<p>Five Rupees [<i>Seven rupees eight annas—in Bengal, Madras, Punjab, Burma and U. P.</i>]</p>

NOTES.

This Article is new.

Stamp to be used.—Impressed stamps—Rule 6.

Cancellation and re-sale.—Where properties were sold and the purchaser made a deposit of Rs. 1,000, the balance being kept in deposit with himself; the transaction fell through and the purchaser retransferred it for Rupees 1,000; held that the valuation should have been Rs. 20,000 the original consideration. *Emperor v. Rameshar Das*, 32 All. 171 : 7 A.L.J. 110 : 5 L.C. 697.

Remission of duty.—The Governor General in Council has been pleased to remit the duty chargeable under Article 17 of Schedule 1 of the Indian Stamp Act on an instrument cancelling a will (*vide* Gazette of India Part 1 Page 286 dated the 13th February, 1926).

Description of Instrument.	Proper Stamp-duty.
<p>18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer—</p> <p>(a) where the purchase-money does not exceed Rs. 10 ;</p> <p>(b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25 ;</p>	<p>Two annas [<i>raised to three annas—in Bengal, Madras, and Punjab and to four annas—in Burma and Bombay.</i>]</p> <p>Four annas [<i>raised to six annas in—Bengal, Madras and Punjab and to eight annas—in Burma and Bombay.</i>]</p>

Description of Instrument.	Proper Stamp-duty.
(c) in any other case	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.

NOTES.

See Art. 16 of Sch. 3 of Act I of 1879. See section 4 (b) of the English Stamp Act, 1891.

Scope.—The duty prescribed above is payable in respect of each item of property sold in auction as a separate lot. If the value of each lot falls below the value specified in clauses (a), (b) or (c) then no duty is payable in respect of the lot, even if the value of all the lots sold to a single purchaser exceeds the values specified in the clauses. This is because a distinct contract is made in respect of each lot and separate stamps are necessary. If one certificate is drawn up then it is to bear an aggregate duty payable in respect of each lot. In this connection see *Emmerson v. Heelis*, 127 E.R. 989 : 2 Taunt. 38 ; *Roots v. Darmer*, 110 E.R. 384 : 3 B. & Ad. 77.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii) ; for (a) and (b), may be stamp for postage or both for postage and revenue—Rule 16.

Amendment—There were conflicting decisions of the different High Courts in India as to whether incumbrances should be included in the computation of stamp duty under this Article. The word “only” in the second column was introduced by Act 6 of 1894 and the effect of the amendment was to over-ride the decisions of the Bombay High Court to the effect that incumbrances should be included in the computation for stamp duty and to establish an uniformity in all the provinces. The views held by the different High Courts are as follows :—

Allahabad High Court.—Where property is sold by court in execution of a decree subject to an incumbrance the amount of stamp duty payable on the sale certificate is to be calculated on the amount of the purchase money and not on the amount of the purchase money plus the incumbrance, *Jwala Prasad v. Ram Narain*, 15 All. 107 : 1892 All. W.N. 243.

Calcutta High Court.—Where property is sold subject to a charge, the payment of such charge does not necessarily form a part of the consideration for the purchase. The stamp duty, therefore, to be paid on a certificate of sale conveying property subject to a charge is ad valorem duty on the amount of the money paid as a consideration for the sale, *Reference from the Board of Revenue*, 10 Cal. 92 : 13 C.L.R. 164.

Madras High Court.—The stamp duty payable on a certificate of sale is governed by Art. 16 (now Art. 18) of Schedule I of the Stamp Act. "Where property sold in auction is subject to a mortgage the transfer by auction sale is not necessarily subject to the charge, and where the transfer is not subject to mortgage or charge the mortgage debt cannot be regarded as forming any part of the consideration for the transfer". *Reference under Stamp Act, s. 49, 5 Mad. 18 F. B.* The stamp on a certificate of sale is regulated by the amount of the purchase money; it is to bear the same stamp as a conveyance for a consideration equal to the amount of the purchase money. *Reference under Stamp Act, s. 46, 7 Mad. 421.*

Bombay High Court.—When property is sold at a court sale subject to a charge, the certificate of sale is to bear duty calculated *ad valorem* for the amount of purchase money *plus* the principal mortgage money charged upon the amount, *Meer Kaisur Khan Murad Khan v. Ebrahim Khan Musakhan*, 15 Bom. 532; *Sha Nagindas Jeychand v. Halalkore Nathwa Gheesla*, 5 Bom. 470 F.B. But in *Shantappa Chedambaraya v. Subrao Ram Chandra Yellapur*, 18 Bom. 175, it was held that on sale subject to a charge, such charge should not be considered as part of the purchase money unless it is admitted by the party or has been established by a decree or they have been declared under s. 252 C.P.C. and the sale has been held subject to them.

On account of the above divergence of opinion the Article was amended by insertion of the word "only," the effect of which was to overrule the above decisions. See the case *Waman Marland v. The Commissioner C. D.*, 49 Bom. 73 : 26 Bom. L. R. 942 : 84 I.C. 421 : 1924 A.I.R. 502 (Bom.) cited under s. 24 *supra*.

Second certificate of sale.—Where a certificate of sale was granted on insufficient stamp and the insufficient stamp and penalty were ordered to be recovered from the grantee, who wanted a fresh certificate of sale from the civil court, held, that the civil court having granted a certificate is not bound to grant a fresh certificate so that the grantee may escape the penalty, *Nandaram Motiram v. Kacha Bhanu*, 9 Bom. 526. If a sale certificate is issued with an insufficient stamp, the court can issue another sale certificate with the correct stamp without prejudice to any question as to penalty on the first certificate. The purchaser himself can apply under s. 41 to the collector requesting the mistake to be rectified, *Collector of Ahmedabad v. Rambhanu*, 32 Bom. L.R. 1084 : 128 I.C. 31 : 1930 A.I.R. 393 (Bom.).

Mistake of officer of court.—But where the stamp for sale certificate was inadvertently punched by the officer of court, the stamp is not thereby rendered unfit for the issue of sale certificate and the punched stamp is to be issued. *Reference under Stamp Act, (1879) 81 Mad. 235 F.B.*

Description of Instrument.	Proper Stamp-duty.
<p>19. Certificate or other document evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.</p> <p><i>See also</i> LETTER OF ALLOTMENT OF SHARES (No. 36).</p>	Two annas.

NOTES.

See Art. 17, Schedule I of Act I of 1879 and Art. 4, Schedule II of Act XVIII of 1869.

Amendment.—The words “two annas” were substituted for the words “one anna” by Act XLIII of 1923, s. 2 (i).

Stamp to be used.—Adhesive stamps—Rule 13; may be postage or both for postage and revenue—Rule 16, or coloured impression—Rule 8; foreign instrument—Rule 12.

Shares or stock.—Share means share in the share capital of the Company, and includes stock except when a distinction between stock and share is expressed or implied, *The Indian Companies Act*, (Act VII of 1913) s. 16 and see also s. 29 of the same Act.

Scrip.—When debentures are allotted to subscribers upon terms that the same shall be payable by instalments, a provisional scrip certificate is issued to subscribers to be exchanged for a regular debenture after all the instalments have been paid up.

Description of Instrument.	Proper Stamp-duty.
<p>20. Charter-party, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not.</p>	<p>One rupee. [<i>raised to Rs. 2— in Bengal, Bombay, Madras, Punjab, U. P. and Burma.</i>]</p>

NOTES.

See Art. 19, Schedule I of Act I of 1879, s. 3 (7) and Art. 22, Schedule II of Act XVIII of 1869.

Stamp to be used.—Impressed label—Rules (6) and (10) (i); foreign instrument—Rule (12).

Charter party.—A charter party is a contract under hand, or sometimes under hand and seal, made between the freighter, *i. e.*, he who charters or hires the ship, or a part, for the carriage of his goods, and the owners, or master on their account (he generally having authority, written or implied, from the terms of his employment), containing the terms upon which the ship is hired to freight; and in this contract the owners or master bind themselves, the ship, tackle and furniture that the goods freighted shall be delivered (dangers of the sea excepted) at the place of consignment; and they also covenant to provide seamen, rigging, etc., and to equip the ship completely, which they also warrant seaworthy. The freighter on his part stipulates to pay the 'freight. It is not at law considered a deed, unless under seal, but its efficacy is not materially lessened for want of this formality. It is distinguished from a *bill of lading*, inasmuch as the charter party states the terms and conditions of the freight or carriage, whereas the bill of lading only ascertains the contents of the cargo. The freighters may underlet, if not prohibited by the terms of the charter party, or may put in other person's goods. The owners are not liable for any other than gross neglect in their captain or master, who is, for all legal purposes, their agent; and their responsibility as carriers commences on the master's receipt of the goods. "The freighters generally insure"—*Tomlins*.

Under the English Act, 1891 (54 & 65 vict. c. 39), s. 49 charter party includes any agreement or contract for the charter of any ship or vessel, or any memorandum, letter or other writing between the captain, master or owner of any ship or vessel, and any other person for or relating to the freight or conveyance of any money, goods, or effects on board of the ship or vessel.

In *Soopromonian Setty v. Heilgers*, 5 Cal. 71 the charter party was a time charter to commerce on arrival in Calcutta.

Description of Instrument.	Proper Stamp-duty.
21. <i>Repealed by sec. 5 (10) of the Finance Act, V of 1927.</i>	<i>This Article imposed a duty of one anna for cheque.</i>

Description of Instrument.	Proper Stamp-duty.
22. Composition-deed , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license for the benefit of his creditors.	Ten rupees [raised to Rs. 12-8—in Bengal, Punjab and U. P ; and to Rs. 15—in Madras and Burma and to Rs. 20—in Bombay.]

NOTES.

See Art 20, Sched I of Act. I of 1879 and Art. 28, Sch. II of Act XVIII of 1869.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Composition-deed—essentials of.—The essential test of a composition deed is that there ought to be a compounding of debts due, *Sneikh Adam v. Chandrashankar*, 14 Bom. L.R. 506.

Article 22, Sch. I of the Stamp Act covers three classes of instruments:—

(I) An assignment for the benefit of the creditors.

(II) An agreement whereby payment of a composition dividend is secured to creditors.

(III) A deed for the purpose of working the debtor's business for the benefit of the creditors.

Therefore an instrument executed by debtors in favour of creditors assigning their dwelling house in satisfaction of their debt comes within the 1st clause and is a composition deed, *Chandrashankar v. Bai Magan*, 38 Bom. 576 : 16 Bom. L.R. 236 : 24 Ind. Cas. 730.

A composition deed requires that all the property of the debtor must be included; otherwise the deed is a deed of conveyance. *Gurudas Mal v. Crown* 8 Lah. L.T. 57.

Foreign composition deed.—A composition by bankrupt debtor and the creditor in Mauritius for payment of debt and approved by court which annuls insolvency proceedings and also whereby the properties of the debtors were vested in the creditors, is a composition deed. *Subbaraya v. Vythilinga*, 16 Mad. 85.

Proper Stamp-duty.

Description of Instrument.

23. Conveyance [as defined by section 2 (10)], not being a TRANSFER charged or exempted under No. 62, —

where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;

where it exceeds Rs. 50 but does not exceed Rs. 100

Ditto 100 Ditto 200
Ditto 200 Ditto 300
Ditto 300 Ditto 400
Ditto 400 Ditto 500
Ditto 500 Ditto 600
Ditto 600 Ditto 700
Ditto 700 Ditto 800
Ditto 800 Ditto 900
Ditto 900 Ditto 1000
and for every Rs. 500 or part thereof in excess of Rs. 1000

Exemption.

Assignment of copyright by entry made under the Indian Copyright Act, 1847 (now Act III of 1914), section 5.

In Bengal and Madras.	In Bombay.	In city of Bombay.	In the cities of Ahmedabad, Poona & Karachi.	In U.P.	In Burma.	In Punjab.
Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
As. 8 0 12 0	0 8 0	0 8 0	0 8 0	0 8 0	0 8 0	0 12 0
Rs. 1 8 0	1 0 0	1 0 0	1 0 0	1 0 0	0 8 0	1 8 0
Rs. 3 0 0	2 0 0	2 0 0	2 0 0	2 0 0	0 8 0	3 0 0
Rs. 4 6 0	4 8 0	8 8 0	6 8 0	3 0 0	0 8 0	4 8 0
Rs. 5 7 8 0	6 0 0	12 0 0	9 0 0	4 0 0	0 8 0	6 0 0
Rs. 6 9 0 0	7 8 0	15 8 0	11 8 0	5 0 0	0 8 0	7 8 0
Rs. 7 10 8 0	9 0 0	19 0 0	14 0 0	6 8 0	0 8 0	9 0 0
Rs. 8 12 0 0	10 8 0	22 8 0	16 8 0	8 0 0	0 8 0	10 8 0
Rs. 9 13 8 0	12 0 0	26 0 0	19 0 0	9 8 0	0 8 0	12 0 0
Rs. 10 15 0 0	13 8 0	29 8 0	21 8 0	11 0 0	0 8 0	13 8 0
Rs. 7 8 0	15 0 0	33 0 0	24 0 0	12 8 0	0 8 0	15 0 0
Rs. 5 7 8 0	7 8 0	17 8 0	12 8 0	7 8 0	7 8 0	7 8 0

The rate is double in a Municipality, Cantonment or Notified Area.

NOTES.

See Art. 21, Sch. I of Act I of 1879 and Art. 15, Sch. I of Act XVIII of 1869. For *Exemption*, see Art. 5, Sch. II of Act I of 1879.

Indian Copyright Act was Act XX of 1874 but it is repealed by Act III of 1914.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii). "

Additional duty under Calcutta Improvement Act.—By sec. 82 of the Calcutta Improvement Act (Bengal Act V of 1911 as amended by Bengal Act III of 1915) the stamp duty on conveyances of immovable property situate in the Calcutta Municipality has been increased by two per cent over and above the rate prescribed for Bengal.

Duties in the cities of Bombay, Ahmedabad, Poona and Karachi.—By section 18 of the Bombay Finance Act II of 1932 the duties on conveyances of immovable property situate within the limits of the cities of Bombay, Ahmedabad, Poona and Karachi have been increased as incorporated in the Article above. Under section 17 of the said Bombay Act II of 1932 "City of Ahmedabad" means the municipal district of Ahmedabad, the cantonment of Ahmedabad, and the notified areas of Kankaria Asarva, Ellis Bridge and Sabar-mati; "City of Poona" means—the subarban municipal district of Poona, and the cantonment of Poona; and "City of Karachi" means—the municipal district of Karachi, cantonments of Karachi and Manora and the limits of the Karachi Port Trust.

Double duty in certain areas in Punjab.—By Punjab Act I of 1924 a duty of double the amount payable under the Punjab local Act as indicated above is charged on conveyances of immovable property situate within a Municipality, Cantonment or Notified Area in the Punjab. "Notified Area" has been explained by the said Act as an area in regard to which a notification has been issued, or may be issued under section 241 of the Punjab Municipal Act, 1911, and in which the population is according to the latest census more than 5,000 in number.

Principle of assessment.—*As set forth therein*—The stamp duty payable on a conveyance is to be calculated on the value of the consideration set forth therein and not on the real value of the property. *Reference under the Stamp Act, s. 46, 20 Mad, 27.* This valuation cannot be increased by the Collector and the valuation as set forth in the instrument is to be accepted unless there is an intentional undervaluation, *In the matter of Muhammad Muzaffer Ali*, 44 All. 339: 20 A.L.J. 161: 1922 A.I.R. 82 (Allahabad): 65 I.C. 811.

Where by one and the same instrument certain freehold lands and goodwill and a transfer of interests secured by leases, were conveyed, the instrument should be stamped *ad valorem* under this Article for the freehold lands, goodwill, buildings, etc. As for the leasehold lands the instrument should be stamped under Art. 60 (b) (now Article 63) for each of the leasehold lands. *In the matter of reference under the Stamp Act*, 23 Cal. 283.

A grant of an exclusive right to take all kankar under the land for consideration, is a conveyance. As no value was given it was held to be stamped under this Article, *Scott v. Bamna*, 44 P.R. 1881 F.B. In *In re the Menglas Tea Estate*, 12 Cal. 383, the subject matter of the sale for which the Rs. 10,000 was payable was one-sixteenth share in the Association; and although, having regard to the objects of the concern, the interest in the land formed undoubtedly a very important element in the sale, the transaction was held to be a "Conveyance" within the meaning of the Stamp Act, and the proper stamp an *ad valorem* duty upon Rs. 10,000.

The stamp duty on a conveyance is assessed on the consideration for the conveyance. A conveyance may be made in consideration of a present payment of money or delivery of stock or of a debt or of an undertaking in the future to pay money or deliver stock. Where there is such an undertaking the property is transferred *subject* to the payment. Where the property is under mortgage, the property is subject to the charge, but the transfer is not necessarily subject to the charge; it becomes so if it be accompanied by an undertaking to discharge the mortgage. This undertaking is in whole or in part the consideration. Where there is no such undertaking, the mortgage debt cannot be regarded as forming part of the consideration for the transfer. *Reference under Stamp Act*, s. 46, 5 Mad. 187.

Conveyance for a term of years.—When after the expiration of the time for redemption, the mortgagee remains in possession under an agreement with the mortgagor for another term of years, after which the property is to be delivered to the mortgagor free from the mortgage lien, *held* that the latter agreement is separate from the original mortgage and is a conveyance, *Gopal Silaram v. Desai*, 6 Bom. 674.

Conveyance in exchange of shares in a public company.—Act VII of 1869, contains no provision that the value of any stock or security shall be deemed or taken to be the consideration money or to represent the consideration money. It contains no provision whatever for a *purchase in exchange* of a share or shares in a public company, nor does it contain any provision for ascertaining the value of such share or shares for the purpose of bringing the amount on an *ad valorem* stamp duty to be paid. . . . Act XVIII of 1869 has not made any provision for an *ad valorem* stamp duty where the consideration of a conveyance consists of shares in a public company made over to the vendor; therefore in such a case no *ad valorem* stamp duty is payable, *Reference under the Stamp Act*, 16 W.R. 208. See *contra*, *Reference under the Stamp Act*, 5 Mad. 187. But under the present Act, s. 21, provisions have been made for the valuation of stock or securities of a public company. See also Art. 62 of the present Act.

Assignment of debt.—A letter (howala) authorizing a person to realize debt due to the writer from a third party, is a conveyance and should be stamped as such, *Nandu Bai v. Gau*, 27 Bom. 150 : 4 Bom. L.R. 951.

Deed of conditional sale.—A sale of a perpetual lease with a condition reserved in the sale deed to the vendor to repurchase under certain conditions is not a security for debt, *Situl Purshad v. Luchmi Purshad*, 10 I.A. 129; 10 Cal. 30; 13 C.L.R. 382; *Bhajan v. Mushtak Ahmed*, 5 All. 324; *Sri Rajah Lakshmi Chelliah Garu v. Sri Rajah Sri Krishna Bhupati*, 7 Mad. H.C.R. 6.

Who can execute.—A conveyance may be made by certain persons though only to themselves under another denomination. Such transfers are to be deemed as if by one person to a different person, *In re Kondali Tea Co., Ltd.*, 13 Cal. 42. So also an old company may transfer to a new company at an agreed value and the transaction is to be deemed a sale. *Reference under Stamp Act*, s. 46, 20 Bom. 432.

Exemption.—The Indian Copyright Act, 1874 is Act XX of 1874. The present Act is Act III of 1914, wherein such assignments are not permitted.

Description of Instrument.	Proper Stamp-duty. "
CO-PARTNERSHIP-DEED. <i>See</i> PARTNERSHIP (No. 46).	
24. Copy or Extract certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee;	<p>Eight annas [<i>raised to annas 12—in Bengal, Madras and Punjab and Re. 1—in Bombay and Burma.</i>]</p> <p><i>In U. P.—</i></p> <p>Eight annas when the copy or extract is of an agricultural lease or of a mortgage-deed or sale-deed of agricultural land; in any other case 12 as].</p>
(ii) in any other case.	<p>One rupee [<i>raised to Rs. 1-8—in Bengal, Madras and Punjab and to Rs. 2—in Bombay and Burma.</i>]</p> <p><i>In U. P.—</i></p> <p>One rupee when the copy of extract is of an agricultural lease or of a mortgage-deed or sale-deed of agricultural land; in any other case, one rupee and eight annas].</p>

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.</p> <p>(b) Copy of or extract from any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.</p>	

NOTES.

See Art. 22, Schedule I of Act I of 1879 and Art. 23, Schedule I of Act XVIII of 1869.

For Exemption—See Art. 9, Schedule II of Act I of 1879 and s. 15 (13) of Act XVIII of 1869.

Amendments.—The clause (b) in the *Exemption* was substituted for clauses (b) and (c) by s. 7 (1) of the Indian Stamp (Amendment) Act, 1906 (5 of 1906). The words “divorce, deaths or burials” in cl. (b) in the *Exemption* were inserted by Schedule I of the Repealing and Amending Act, 1914 (10 of 1914).

Copies requiring stamp under this Article are those which are not required to be stamped under the Court Fees Act.

Stamp to be used.—Impressed stamp—Rule 6; foreign copies—Rule 12. Copies of maps, plans and printed copies certified to be true, with court fee stamp—Rules 13 (c) and 17 (c).

Application.—Art. 22 of Schedule I of Act I of 1879 (Art. 24 of Act II of 1899) has no application to copies or extracts of entries in account books or other similar books, filed in accordance with s. 62 of Act XIV of 1882 (Order VII, Rule 17 of Act V of 1908) although officers of court have to attest the same as correct, because such copies are made in consequence of provisions in the Code of Civil Procedure, *Krishnaji Sadashib Ranade v. Dulaba*, 15 Bom. 687.

A copy of an extract of an entry in an account book filed under ss. 141, 141A and 152A (Order 13, Rules 4, 5 and 7) does not require a stamp under Art. 24 of the Stamp Act, 1899, *Kastur Danaji v. Fakiria Halia*, 36 Bom. 522: 4 Bom. L. R. 223. See also *Nandu Bai v. Gau*, 27 Bom. 150 (154): 4 Bom. L. R. 951.

Where the plaintiff put in evidence certain entries in his book and produced the original book in court and the book was returned on the plaintiff furnishing copies of the entries, held that these copies of the entries need not be stamped, *Harichand v. Jivna Subhana*, 11 Bom. 526: 1887 P. J. 90 F. B.

Municipal records.—A copy granted of an application to the Municipal Board and of orders passed by the Board on that application comes under Art. 22 (now Art. 24) of Act I of 1879 as the records of proceedings of the Municipal Boards are public records and the secretary of the Municipal Board who is in custody of the record, and is authorized to deliver copies, is a public officer for such purposes, *Reference under Act I of 1879, s. 46, 19 All. 293 : (1897) 17 All. W.N. 61.*

Presumption as to stamp on the original.—Where the original *solenama* was destroyed and a copy of the same was tendered and admitted by the trial court, and the copy bore a stamp of Re. 1, the lower appellate court thought that the original was sufficiently stamped, *held* that there is no presumption that the original bore the same stamp as the copy and as the trial court accepted the copy it must be presumed that the original was correctly stamped, *Saiyed Abid Hussain v. Ashgar Hussain*, 11 All. L.J. 506 : *confirmed on appeal* by P. C. in *Ahmed Raza v. Saiyed Abid Hussain*, 43 I.A. 264 : 38 All. 194 : 21 C.W.N. 265 : 18 Bom. L.R. 904 : 14 All. L.J. 1909 : 24 C.L.J. 504 : (1915) M.W.N. 548 : 39 I.C. 11.

Description of Instrument.	Proper Stamp-duty.
<p>25. Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid,—</p> <p>(a) if the duty with which the original instrument is chargeable does not exceed one rupee [<i>raised to Re. 1-8—in Bengal, Madras and Punjab and to Rs. 2—in Bombay.</i>]</p> <p>(b) in any other case [<i>not falling within the provisions of s. 6A—added in Bengal, Madras and Punjab.</i>]</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Counterpart of any lease granted to a cultivator when such lease is exempted from duty.</p>	<p>The same duty as is payable on the original.</p> <p>One rupee [<i>raised to Rs. 1-8—in Bengal, Madras and Punjab and Rs. 2—in Bombay and Burma.</i>]</p>

NOTES.

See Art. 23, Schedule I of Act I of 1879.

For *Exemption*, see Art. 13 (c) of Schedule II of Act I of 1879 and s. 15 (10) of Act XVIII of 1869.

Stamp to be used.—(a) Adhesive stamp where it is so payable on the original; impressed label in other places. (b) Impressed stamp—Rules 6 and 10 (i).

Partition deed in duplicate.—When a deed of partition was executed in duplicate or triplicate etc. under Act X of 1862, the copy furnished to each co-sharer was liable to stamp duty according to the value of the share of that sharer, *Narayan Raghunath v. Kashinath*, 8 Bom. 299. Under Act I of 1879, the instrument required stamp on the market value of the entire property sought to be partitioned. *Reference under Stamp Act*, 2 All. 664. But under the present Act the stamp is to be on the value of the separated share under Art. 45 and s. 29 (g).

Exemption.—Counterpart of a lease.—A counter-part of a lease of salt-pans, not being counter-part of a lease granted to a cultivator, is not exempt from stamp duty, *Manjunath Mangeshaya Bindur v. Mangesh Sheshagiriapa*, 18 Bom. 546.

Cultivator—meaning of.—A cultivator is a person who actually cultivates the land, either by himself or by his family or by hired labourer or servants, but a contractor or speculator is not a cultivator, *Reference under Stamp Act*, 5 All. 560. A person who is a cultivator according to the meaning of the term, continues to be cultivator if he takes a horticultural lease to plant cocoanut trees. *Ramchandra Basudevshet v. Babaji Kusoji*, 15 Bom. 73 (76).

Description of Instrument.	Proper Stamp-duty.
26. Customs Bond	
(a) where the amount does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount.
	[The same duty as a Bottomry Bond (No. 16) for such amount—in Bengal, Madras and Punjab].
(b) in any other case.	Five rupees [raised to Rs. 10—in Bengal, Bombay, Madras, Punjab, Burma and C. P.]

NOTES.

See Art. 24, Schedule I of Act I of 1879 and Art. 8, Schedule I of Act XVIII of 1869.

Customs bonds are instruments executed for securing payment of duties on dutiable goods, deposited in a bonded ware-house.

These instruments are executed in favour of Government. See also s. 92 of the Sea Customs Act (Act VIII of 1878).

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Description of Instrument.	Proper Stamp-duty.
27. Debenture (whether a mortgage debenture or not), being a marketable security transferable—	
(a) by endorsement or by a separate instrument of transfer ;	The same duty as a Bond (No. 15) for the same amount. <i>[The same duty as a Bottomry Bond (No. 16) for the same amount—in Bengal, Madras and Punjab].</i>
(b) by delivery	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
<i>[In U. P.— (b) by delivery— where the face amount of the debenture does not exceed Rs. 100. where it exceeds Rs. 100 but does not exceed Rs. 200. where it exceeds Rs. 200</i>	<i>One rupee four annas. Two rupees eight annas. The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture].</i>
Explanation. —The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.	
Exemption. A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect to the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.	
<i>See also BOND (No. 15), and SECTIONS 8 and 55.</i>	

NOTES.

This Article is new.

Amendment.—This Article is substituted for the original Article by s. 3 (iii) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

Stamp to be used.—Impressed stamp—Rule 6; if a foreign instrument—Rule 12.

Debenture.—A debenture is a security issued by a company or sometimes by clubs or individuals acknowledging or creating a debt. As a rule it contains a covenant to pay. A debenture is a document which either creates a debt or acknowledges it and any document which fulfils either of the conditions is a debenture. Under s. 2 (iv) of the Indian Companies Act debenture includes Debenture Stock.

Where money was advanced upon the security of debentures the instrument is a mortgage, and not a debenture and an undertaking to make further advance upon second debenture is "an agreement not otherwise provided for." *Reference under Stamp Act, s. 46, 23 Mad. 207.*

•Where a club in order to secure payment of the debenture stock, conveyed, assigned and transferred to the debenture-trustees all the property of the club to hold the same according to the rights and interests therein respectively of the members of the club, and issued certificates of debentures which stated the names of the shareholders and the amount of stock held by them and referred to the fact that the debenture stock was constituted and secured by the trust deed, held that the certificates were not debentures within the meaning of Art. 27 of the Indian Stamp Act as it neither created or acknowledged a debt but were instruments for completing the trust deed under which the assets of the club were mortgaged as security for the debenture stock and therefore they were liable to be stamped not as debentures under Art. 27 but with a duty of one rupee under s. 4 (1) of the Indian Stamp Act, *In re Rangoon Club*, 4 Rangoon 456: 100 I.C. 315: 1927 A.I.R. 37 (Ran.).

As to what may be or may not be a debenture, see *Lemon v. Austin Friars Investment Trust*, (1926) 1 Chancery Div. 1.

Description of Instrument.	Proper Stamp-duty.
DECLARATION OF ANY TRUST. See TRUST (No. 64).	
28. Delivery order in respect of goods , that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.	One anna.

NOTES.

See Art. 26 of Schedule I of Act I of 1879.

This Article seems to be limited to the clauses mentioned, *viz.*,

- (1) A person mentioned in the instrument or his assign or holder thereof,
- (2) The delivery of goods lying in places mentioned,
- (3) The goods are sold or otherwise transferred.
- (4) The instrument must be signed by or on behalf of the owner.
- (5) The value of the goods must exceed Rs. 20 in value.

A delivery order is an instrument executed by the owner of goods to the bailee authorizing a person or his assigns to take delivery of goods in the custody of the bailee. It is issued by the seller. As to effect of delivery order and its nature see sections 90, 95, 98 and 108 of the Indian Contract Act (Act IX of 1872).

Stamp to be used.—Adhesive stamp, s. 11; it may be for postage or both for postage and revenue—Rule 16; coloured impression—Rule 18.

Description of Instrument.	Proper Stamp-duty
DEPOSIT OF TITLE-DEEDS. [See AGREEMENT relating to DEPOSIT OF TITLE-DEEDS, PAWNS OR PLEDGE (No. 6).]	

Amendment.—The words within brackets were substituted for the word and figure "See Agreement by way of equitable mortgage (No. 6)" by s. 8 (2) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Description of Instrument.	Proper Stamp-duty.
DISSOLUTION OF PARTNERSHIP. See PARTNERSHIP (No. 46).	
29. Divorce —Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee [raised to Rs. 2— <i>in Bengal, Burma and Madras</i> and to Rs. 5—in <i>Punjab, U.P. and Bombay.</i>]

NOTES.

See Art. 34, Schedule I of Act I of 1879.

This Article can only apply to cases when the dissolution takes place without intervention of court and *an instrument is executed.*

The Indian Divorce Act is Act IV of 1869.

Stamp to be used.—Impressed stamp—Rule 6.

Divorce among lower caste Hindus.—Divorce may be made by mutual agreement on receipt of expenses of marriage among parties in *Tinevelley, Sankaralingam Chetty v. Subban Chetty*, 17 Mad. 479; *R. v. Sambhu*, 1 Bom. 347; *Government of Bombay v. Ganga*, 4 Bom. 330; *Empress v. Umi*, 6 Bom. 126.

Under Mahomedan Law an instrument is not necessary but may be by writing. See Baillie's Mahomedan Law, 6th section, Ch. II, Bk. III.

Description of Instrument.	Proper Stamp-duty.
DOWER—Instrument of. See SETTLEMENT (No. 58).	
DUPLICATE—See COUNTERPART (No. 25).	
30. Entry as an Advocate, Vakil or Attorney on the roll of any High Court under the Indian Bar Councils Act, 1926, or in exercise of powers conferred on such Court by Letters Patent or by the Legal practitioners Act, 1884,—	
(a) in the case of an Advocate or Vakil	Five hundred rupees [<i>raised to Rs. 750—in Bengal, Punjab and to Rs. 625—in Madras.</i>]
(b) in the case of an Attorney	Two hundred and fifty rupees [<i>raised to Rs. 500—in Bengal, Bombay, U. P. and Punjab and to Rs. 312-8-0—in Madras.</i>]
<i>Exemption.</i>	
Entry of an Advocate, Vakil or Attorney on the roll of any High Court when he has previously been enrolled in a High Court.	

NOTES.

See Art. 27, Sch. I of Act I of 1879. For exemption see Art. II(a), Sch. II of Act I of 1879.

The Legal Practitioners Act is Act XVIII of 1879 as amended by Act IX of 1884 and other Acts.

Alteration in law.—The words “under the Indian Bar Councils Act, 1926 or,” were added by sec. 19 and schedule of the Indian Bar Councils Act, 1926, (Act XXXVIII of 1926).

Stamp to be used.—Special adhesive stamp, bearing the words ‘Advocate’, ‘vakil’, or ‘Attorney’ as the case may be—Rule 17 (c) and s. 11.

High Court.—The term ‘High Court’ does not include the ‘court of the Judicial Commissioner, *In re Grant*, 14 P.R. 1888. The expression ‘High Court’ in the entry in the schedule refers to High Court not established by Royal charter and to pleaders authorized to practise in courts subordinate to the High Court; therefore the applicants who are First Grade Advocates of Judicial Commissioner’s Court in Upper Burma can only be enrolled as Advocates of the Rangoon High Court on payment of duty under Art. 30, Sch. I of the Stamp Act, *In the matter of First Grade Advocates of the Late Court of the Judicial Commissioner of Upper Burma*, 1 Rangoon 142 : (1924) All. I.R. 1 (Rangoon).

Exemption.—A vakil on the rolls of Madras High Court, applying to be entered on the rolls of Advocates, after call to the Bar in England, is exempted from duty under this Article, *In re Parthasaradi*, 8 Mad. 14.

B at the time of his enrolment in the High Court as an Attorney of the High Court, paid stamp of Rs. 250 ‘under Art. 27, Sch. I of the Stamp Act 1 of 1879; subsequently B was enrolled as an Advocate of the same High Court and paid Rs. 500 under this Article, held that B is entitled to a refund of Rs. 500 paid on enrolment as an Advocate, although he only paid Rs. 250 on his enrolment as an Attorney, he not having served his Articles of clerkship in India, *In re Baxter*, 36 Cal. 645 : 9 C.L.J. 621 : 2 Ind. Cas. 843.

Description of Instrument.	Proper Stamp-duty.
31. Exchange of property —Instrument of	The same duty as a Conveyance. (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.

NOTES.

See Art. 35 of Sch. I of Act I of 1879; Art. 8, Sch. I and Art. 38, Sch. II of Act XVIII of 1869. See s. 73 of the English Act, 1891 (54 and 55 vict. c. 39).

Duties on a conveyance having been raised in some provinces, the duties leviable under this Article will also be charged for those provinces.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii); if executed out of British India—Rule 12.

Exchange.—The words “exchange” is not defined in this Act but is defined in the Transfer of Property Act, s. 118, as follows:—“When two persons transfer ownership of one thing for the ownership of another neither thing or both things being money only, the transaction is called an exchange”. When one person transferred lands belonging to him to another for lands belonging to that other the transaction is an exchange and is governed by this Article, *Empress v. Dufarkanath Chowdhury*, 2 Cal. 399. See also *Bowji v. Parsu*, 1883 P.J. 15.

Distinction.—“The difference between a sale and an exchange is this that in the former the price is paid in money, whilst in the latter it is paid in goods by way of barter.” *Samaratmal Uttamchand v. Govind*, 25 Bom. 696 (698): 3 Bom. L.R. 384. A transfer of certain shares of one company, for a certain number of shares of another company, is not exchange of shares but the transaction is a conveyance or sale, *Coals Limited v. Inland Revenue Commissioners*, (1897) 2 Q.B. 423: 66 L.J.Q.B. 732.

Description of Instrument.	Proper Stamp-duty.
<p>EXTRACT. See COPY (NO. 24).</p> <p>32. Further charge—Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—</p> <p>(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession) ;</p> <p>(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—</p> <p>(c) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument ;</p> <p>(ii) if possession is not so given.</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made), less the duty already paid on such original mortgage and further charge.</p> <p>The same duty as a Bond (No. 15) [<i>Bottomry Bond</i> (No. 16)—in Madras] for the amount of the further charge by such instrument.</p>

NOTES.

See Art. 30, Sch. I of Act I of 1879, and Arts. 11 and 17 of Act XVIII of 1869. See section 87 (3) of the Stamp Act, 1891 (54 & 55 Vict. C. 39).

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii) or if executed out of British India—Rule 12.

Mortgage—further charge.—Where the mortgagors executed usufructuary mortgage of their field for Rs. 180; and then executed another mortgage of the same fields for Rs. 250 which was made up of the amount due on the 1st bond plus cash, held that the 2nd bond should be stamped as a mortgage since it was not intended to operate as a further charge under a subsisting mortgage. *Megha v. Agarsing*, 25 Bom. 370 : 3 Bom. L.R. 42.

Agreement to make further advance.—Where certain debentures were transferred as security for the amount advanced and also it was agreed that further advance will be made on the same security, held : “in respect of the undertaking to make further advance, we think that the document is liable to further duty as an agreement not otherwise provided for.” *Reference under Stamp Act, s. 46, 23 Mad. 207.*

Description of Instrument.	Proper Stamp-duty.
33. Gift.—Instrument of, not being a SETTLEMENT (No. 58) OR WILL OR TRANSFER (No. 62).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.

NOTES.

See Art. 36, Sch. I of Act I of 1879, and Art. 37, Sch. II of Act XVIII of 1869.

The duty on a conveyance having been raised in some provinces, the duty on a deed of gift has been necessarily raised in those provinces.

Stamp to be used.—Impressed stamp—Rules 6 and 10; if executed out of British India—Rule 12.

Gift.—Gift is the transfer of certain existing movable or immovable property made voluntarily, and without consideration, by one person, called the donor, to another called the donee and accepted by or on behalf of the donee, *The Transfer of Property Act*, (Act IV of 1882), s. 122.

Construction.—“As set forth in such instrument.”—The words “as set forth in the instrument” refer back to the word “value” and not the word “property.” *In the matter of Muhammad Muxaffer Ali*, 44 All. 339 : 20 All. L.J. 161 : 1922 A.I.R. 82 (All.) F.B. See also *Reference under Stamp Act, s. 46, 8 Mad. 453.* The obvious and

natural meaning of words used in a deed, is to be given to them, even when words were inserted in the deed for the purpose of specifying and ascertaining the stamp duty payable on the instrument, *Fanindra Nath Ray v. Bhola Dassi Debi* 38 C.L.J. 21 : 75 I.C. 402.

Conditional gift.—An instrument whereby property was conveyed to donee with a condition superadded that he would maintain the donor for life is a deed of gift and should be stamped as such, *Reference under the Stamp Act, 1879, 12 Mad. 69.*

A widow executed a deed of settlement on plain paper whereby an annuity charged on the rents of a village for religious purposes was granted to P and an annuity of Rs. 325 out of the village for the worship and other religious ceremonies of the tomb of Bala Maharaj, held that the instrument is a deed of gift and should be stamped as such, *In re Bhavanibai*, 7 Bom. 194.

Gift and will—distinction.—A will by the testator does not become a deed of gift or a release or a deed of assignment merely because some past acts are recited in it. *Haribai v. Krishnarav*, 22 Bom. 632.

Description of Instrument.	Proper Stamp-duty.
HIRING AGREEMENT or agreement for service. See AGREEMENT (No. 5.)	
34. Indemnity Bond	The same duty as a Security Bond (No. 57) for the same amount.

NOTES.

See Art. 28, Sch. I of Act I of 1879, and Art. 2, Sch. I of Act XVIII of 1869.

An instrument to be charged with duty under this section must be a simple indemnity bond. If there be an agreement to indemnify in relation to some other instrument which is chargeable with duty under some other Article, the instrument to be chargeable under this Article must contain *distinct matters*. It must also come within the definition of bond as given in this Act.

Stamp to be used.—Impressed label—Rules 6 and 10 and if executed out of British India—Rule 12.

Indemnity Bonds.—A contract by which one party promises to save the other from loss caused to him by the conduct of promisor himself, or by the conduct of any other person, is called a "contract of indemnity". *The Indian Contract Act* (IX of 1872), s. 124.

Contract contained in a petition to Court.—A contract contained in a petition to court made by the judgment debtor, decree-holder and the surety whereby the surety made himself answerable for the default

of the judgment debtor, must be stamped as a contract of guarantee in addition to the stamp as in a petition of court. *Joyman Bewa v. Easin Sarkar*, 53 Cal. 515 : 30 C.W.N. 609 : 43 C.L.J. 493 : 95 I.C. 483 : 1926 A.I.R. 509 (Cal.).

As to costs.—Where under a mortgage bond, the mortgagor is to repay to the mortgagee any costs incurred by him in defending suits brought against him by the co-sharers of the mortgagor as well as debts charged upon the property, such a mortgage deed does not require any additional duty under this Article as the covenants do not create a fresh obligation, *Damodar Gangadar v. Vamanrav Lakshman*, 9 Bom. 435.

Losses.—Where a mortgagor agrees with the mortgagee that he will repay to the mortgagee all losses arising out of default of tenants, such an agreement is not a lease or a counterpart of a lease but is an agreement to indemnify the mortgagor against losses to be incurred by him at the time of redemption, and falls under this Article, *Ram Krishna Gopal v. Vithu Shivaji*, 10 Bom. H.C.R. 441.

What are not indemnity bonds.—*Covenants as to title.*—The usual covenants as to title do not make a deed of conveyance an indemnity bond; therefore, such a deed is not liable to stamp duty as an indemnity bond in addition to duties as a conveyance. *Reference by the Board of Revenue*, 1 Mad. 133.

A deposit by a contractor of G. P. Notes in the District Treasury for due discharge of his contract need not be stamped as a mortgage or an indemnity bond, *Reference under Stamp Act*, s. 46, 11 Mad. 39.

Note to a Railway Company.—A note to indemnify a railway company, its agents and servants, in respect of all claims in respect of goods by a consignee and his surety in favour of a railway company when he is unable to produce the railway receipt, is not an "indemnity bond" within the meaning of this Article, as the executants do not oblige themselves to pay money to another, *Reference from the Chief Commissioner of C. P.*, 5 Bom. 478 F.B.

Excise Bonds for the transport of country liquor from the distillery to the warehouse without payment of duty, is to be considered as an Indemnity Bond and stamped accordingly. (G. R. R. D. No. 3998 dated, 30th April, 1914—Bombay).

Description of Instrument.	Proper Stamp-duty.
INSPECTORSHIP-DEED. <i>See</i> COMPOSITION-DEED (No. 22).	
INSURANCE. <i>See</i> POLICY OF INSURANCE (No. 47).	
35. Lease, including an under-lease or sub-lease and any agreement to let or sub-let—	

Description of Instrument.	Proper Stamp-duty.
(a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year ;	The same duty as a Bond (No. 15) [<i>Bottomry Bond (No. 16)</i> —in Bengal, Punjab, and Madras] for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than three years [<i>five years</i> —in Bengal, Madras, Punjab & U.P.] ;	The same duty as a Bond (No. 15) [<i>Bottomry Bond (No. 16)</i> —in Bengal, Punjab and Madras] for the amount or value of the average annual rent reserved.
••• (iii) where the lease purports to be for a term in excess of three years [<i>exceeding five years and not exceeding ten years</i> —in Bengal, Madras, Punjab & U.P.] ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) where the lease does not purport to be for any definite term ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
[In Bengal, Madras, Punjab & U.P.—	
(v) where the lease purports to be for a term exceeding ten years, but not exceeding twenty years ;	The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved].
(v) where the lease purports to be in perpetuity.	The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
[In Bengal, Madras, Punjab & U.P.—	
(v) where the lease purports to be for a term exceeding twenty years, but not exceeding thirty years ;	The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved.
(vi) where the lease purports to be for a term exceeding thirty years, but not exceeding one hundred years ;	The same duty as a Conveyance (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved.

Description of Instrument.	Proper Stamp-duty.
(vi) where the lease purports to be for a term exceeding one hundred years or in perpetuity ;	<i>The same duty as a Conveyance (No. 23) for a consideration equal (in the case of a lease granted solely for agricultural purposes to one-tenth and in any other case—omitted in Madras) to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</i>
(vii) where the lease does not purport to be for any definite term ;	<i>The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long].</i>
(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.	<i>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.</i>
(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	<i>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered :</i>
	<i>Provided that, in any case when an agreement to lease is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas [Twelve annas—in Bengal, Madras, Punjab, U. P. and one rupee—in Bombay].</i>

Exemptions

- (a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of

Description of Instrument.	Proper Stamp-duty.
<p>food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p> <p>[<i>In this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank—added in Bengal, Madras, Punjab and U. P.</i>]</p> <p>(b) Leases of fisheries granted under the Burma Fisheries Act, 1875, (now Burma Act III of 1905) or the Upper Burma Land and Revenue Regulation, 1889.</p> <p>[<i>Explanation.—When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses, or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent—added in Bengal, Madras, Punjab and U. P.</i>]</p>	

NOTES.

See Arts. 4 and 39, Sch. I of Act 1879, and s. 3 (15) and Art. 19 Sch. I of Act XVIII of 1869. See Ss. 75, 76 and 77 of the Stamp Act, 1891 (51 and 55 vict. C. 39).

For *Exemption* see Art. 13 of Schedule II of Act I of 1879.

The Upper Burma Land and Revenue Regulation, 1889, is Burma Regulation III of 1889.

Stamp to be used.—Impressed stamp—Rules 6 and 10; if executed out of British India—Rule 12.

Lease.—As to what is a lease see definition in s. 2 (16); but in *Veerappa Naidu v. Avudayamal*, 1925, A.I.R. 134 (M.) the definition

as given in the Transfer of Property Act was adopted. It would appear from above that for the purposes of this Article a lease includes (1) a sub-lease (2) an under-lease or (3) an agreement to let or sub-let.

The Explanation added by the Madras Legislature adopts the decision in 7 Mad. 155 F.B. It was necessary owing to the Bombay decision in 39 Bom. 434.

Lease—how to be valued for stamp purposes.—

Bombay.—Where a piece of land was leased for 5 years and it was agreed that the lessee would pay Rs. 100 to the lessor and Rs. 16-8 to Government as revenue, *held*, that the Government assessment did not form a part of the profit and therefore not rent, hence cannot be taken into consideration in assessing the stamp to be affixed to the lease, *In re Gangaram Narayandas Teli*, 39 Bom. 434 (437) : 17 Bom. L.R. 320 : 28 Ind. Cas 584.

Calcutta.—An instrument embodying an arrangement whereby it was intended to effect a lease of certain properties in consideration of continuance of a former loan and a new loan, is to be stamped as a mortgage, *In the matter of a Reference by the Board of Revenue*, 8 Cal. 254 : 10 C.L.R. 30.

Madras.—Where a mittadar executed a perpetual lease in consideration of payment by the lessee of Rs. 1,554-10-7 to Government and Rs. 400 to the lessor as the net rent, *held* that the instrument is a lease reserving a rent of Rs. 1,954-10-7 and stamp duty is to be calculated on that amount, *Reference under Stamp Act*, s. 46, 7 Mad. 155 F.B.

Punjab.—Where by an instrument the owner conveyed their shares in consideration of a lump sum of money being paid in annual instalments throughout the period during which the instrument is to run and the Government revenue is to be paid to Government direct, instead of through the owner, *held* that although the payment of the lump sum was spread over several years, it is a premium and the provision of payment of Government Revenue is in the nature of rent and therefore the instrument is a lease whereby a premium is payable and rent is reserved and is to be stamped under this Article, *In re a Reference by the Financial Commissioner of the Punjab*, 102 P.R. 1882.

Premium or fine.—A fine or premium means something paid in advance and not subsequently, *The Deputy Collector of Rohri v. Denmal*, 1883 P.J. 11. Where a lease was executed for four years in consideration of rent for 4 years at Rs. 15 a year on receipt of Rs. 50 advanced and stipulating for the return of lands on payment of the remaining Rs. 10 at the end of the period of four years, *held* that the amount advanced is not a premium, *Reference under Stamp Act*, s. 46, 7 Mad. 203 F. B.

Ijara.—A document purporting to be a deed of mortgage with possession, by which the executant, finding himself in an account

settled indebted to another person to the extent of Rs. 899-12-0, makes over to him possession of certain lands for nine years in liquidation of principal and interest, giving him permission to enjoy the produce of the lands the profits and losses arising therefrom being entirely his and stipulating for a payment to the executant of only a sum of Rs. 35 annually, is an instrument of lease and not a mortgage. The stamp duty is leviable as that of a lease with a premium, *Reference under Stamp Act, s. 46, 7 Mad. 203 F.R.*

Where no rent is reserved.—An agreement for lease, on which no rent is reserved, no premium paid or money advanced, is not included in the schedule and does not require a stamp. *Musst. Sunder Kuer v. Emperor, 20 C.W.N. 923 : 1 Pat. L.J. 366 : 1 Pat. L.W. 72 : 36 Ind. Cas. 175.*

Daily rent.—An agreement to pay a daily rent of Rs. 2 for a shop in Calcutta, is a monthly tenancy and comes within Art. 35, cl. (a), sub-cl. (i) of the first Schedule of the Indian Stamp Act, II of 1899 i.e., "a lease which purports to be for a term less than a year." *A. M. Amolia v. Ibrahim Ishak, 46 Cal. 804 : 23 C.W.N. 398 : 51 Ind. Cas. 221.*

Claim for renewal.—A claim for renewal of lease at the option of either the lessor or lessee does not extend the period fixed in the lease, *Apu Budgavda v. Narhari Annajee, 3 Bom. 21 ; The Secretary to the Commissioner of Salt, &c. v. Sutherland Orr, 11 M.L.J. 350 F.B. ; Reference under Stamp Act, 25 Mad. 3.* A lease for one year containing a clause for renewal for a further period, is not a lease exceeding one year, but with a stipulation that the lease should remain in force until it was repaid, is a lease exceeding one year, *Bhobani Mahto v. Shibnath Para, 13 Cal. 113.*

A covenant for renewal does not operate as a present demise but is only a contract. It is a privilege granted to the lessee, *Mahendra Nath Srimani v. Kailash Das Nath, 55 Cal. 841 (852) : 47 C.L.J. 376 : 32 C.W.M. 439 : 109 I.C. 298.*

Where rent was payable month by month and at the end of the terms of the lease, the deposit is to be returned, *held* that the lease is a simple lease and the instrument does not deal with distinct matters, *Reference under Stamp Act, 26 Mad. 473.* See also *Reference under Stamp Act, s. 46, 7 Mad. 203.*

A lease for an indefinite term.—A lease which is to run so long as the tenant continues to pay rent is a lease for an indefinite term. *Shceogolam v. Budree Nath, 4 N.W.P.R. 36.*

Agreement in lease.—An agreement in a lease to pay a certain thing on account of the balance for the previous year amounts to a bond and should be stamped under Art. 15, *Ram Chandra v. Dhondhoo, 7 Bom. L.R. 929.*

Present demise.—M. agreed to take on rent all the shops to be constructed on the land which K. had taken from a third party. The contract was that M. is to pay a certain amount as earnest money and

to advance certain amount for the construction of the house on condition that credit was to be given for the advance at a certain rate out of the rent payable. Therefore at the time of the agreement the house to be leased was not in existence, and K. the lessor had no interest in the house.

An agreement to lease must be a present demise and not an agreement that in certain contingencies a lease will be granted. The instrument was not therefore an agreement to lease and consequently Art. 35C of the Stamp Act is not applicable. The agreement was a simple agreement and the document advanced was a loan and forms no part of the consideration for the lease. *Manek Lal Mani Lal, In re* 53 Bom. 1: 30 Bom. L.R. 1396: 1928 A.L.R. 553 (Bom.): 122 I.C. 758.

Exemption.—A lease to be exempt must be (a) by a cultivator, (b) without payment of any fine or premium, (c) for a period less than a year, (d) for a sum less than Rs. 100 annually.

(a) 'Cultivator'.—The word "cultivator" means a person who actually cultivates the land by himself or by members of his family or by hired labourers or servants and does not include lessees, middlemen who are not exempt. *Reference under Stamp Act*, 5 All. 360: (1883) 3 All. W.N. 113. See also *Ram Chandra v. Babaji*, 15 Bom. 73 (76).

(i) *For purposes of cultivation.*—The language of clause (b) of Art. 13, of Sch II of Act I of 1879 (Exemption) exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed Rs. 100. *In re Bhavan Badhar*, 6 Bom. 691.

A lease for the purpose of planting cocoanut trees is a lease for cultivation and is exempt from stamp-duty, although the lessee may not belong to the class known as cultivators. *Ramchandra Vasudebshet v. Babaji Kusaji*, 15 Bom. 73. See also *In re Gangaram Narayandas Teli*, 39 Bom. 434 (437): 17 Bom. L.R. 320: 28 Ind. Cas. 584.

(ii) *For purposes other than that of cultivation.*—Where the lease was executed for the purpose of living in the land leased and houses were built, held that the exemption only applies to a tenancy for the purpose of cultivation and not to any other kinds of tenancy, hence the lease is not exempted. *Narayan Ramchandra v. Dhondur Raghuram and Ors.*, 10 Bom. 173: 1885 P.J. 193.

A lease of salt pans is not exempt *Manjunath Mangeshaya Baindur v. Mangesh Sheshagiriapa Gokarnkar*, 13 Bom. 546 F.B.; or when the lease is by a contractor or speculator, who is not a cultivator, *Reference under Stamp Act*, 5 All. 360: (1883) 3 All. W.N. 123.

Collateral purpose.—A lease may be void for want of proper stamp still the instrument can be admitted to prove an agreement, but

the instrument must bear stamp as on an agreement before that can be done. *Golden v. Taylor*, 2 F. and F. 110.

Objection.—The executant of a counterpart of a lease is estopped from objecting to its admissibility in evidence or its validity on the ground that the original is not properly stamped. *Paul v. Meak*, 31 R.R. 559 : 2 Y. and Jervis 116.

Under the Indian Act, s. 29, the duty on a counterpart is to be paid by the lessor.

Description of Instrument.	Proper Stamp-duty.
<p>36. Letter of allotment of shares in any company or proposed company or in respect of any loan to be raised by any company or proposed company.</p> <p>See also Certificate or other Document (No. 19).</p>	

NOTES.

See Art. 40, Sch. 1 of Act I of 1879. See s. 79 of the Stamp Act, 1891 (54 and 55 vict. C. 39).

Amendment.—The duty has been raised to “two annas” by Act 43 of 1923, s. 2 (i).

Notice of allotment of shares.—A notice of allotment of shares requires stamp, *Mohun Lal v. Sri Gangaji Cotton Mills, Co.*, 4 C.W.N. 369.

Executory contracts for sale of letters of allotments of shares or scrip are not within the exemption in Art. 5 as these are not agreements of sale of “goods and merchandise,” and are to be stamped as agreements, *Ward v. Lord Londesborough*, 2 C.B. 252.

Stamp to be used.—Adhesive stamp—Rule 13 (b); postage or postage and revenue stamps—Rule 16; a coloured impression—Rule 8.

Description of Instrument.	Proper Stamp-duty.
<p>37. Letter of Credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.</p>	Two annas.

NOTES.

See Art. 41, Sch. 1 of Act I 1879, and Art. 2, Sch. II of Act XVIII of 1869.

Amendment.—The duty has been raised to “two annas” by Act 43 of 1923.

Stamp to be used.—Adhesive stamps—Rule 13 (f); coloured impression—Rule 8; or adhesive postage or postage and revenue stamps—Rule 16.

Letter of credit.—Letter of credit is where a merchant or correspondent writes to another, requesting him to credit another with a sum of money on the account of the writer.—*Tamlins*. See also s. 2 (3) (c) of this Act.

A *letter of credit* (sometimes called a bill of credit) is an open letter of request whereby one person (usually a merchant or banker) requests some other person or persons to advance moneys, or give credit, to a third person, named therein for a certain amount and promises that he will repay the same to the person advancing the same or accepts bills drawn upon himself for the like amount. It is called a *general letter of credit* when it is addressed to all merchants or other persons in general requesting such advance to a third person. It is called a *special letter of credit* when it is addressed to a particular person by name, requesting him to make such advance to a third person.

No particular set form of words is necessary but it must contain a request (general or special) to pay the bearer or person named money or sell him some commodity on credit or give him something of value and look to the drawer of the letter for recompense and it partakes of the nature of a negotiable instrument, *Chandanmull Benganey v. National Bank of India Ltd.*, 51 Cal. 43 : 79 I.C. 757 : 1924 A.I.R. 552 (Cal.).

Description of Instrument.	Proper Stamp-duty.
<p>LETTER OF GUARANTEE See AGREEMENT (No. 5).</p> <p>38. Letter of License, that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.</p>	<p>Ten rupees [<i>Duty raised to Rs. 12-8—in Bengal Burma, U. P. and Punjab and to Rs. 15—in Madras</i>].</p>

NOTES.

See Art. 42, Sch. I of Act I of 1879, and Art. 29, Sch. II of Act, XVIII of 1869.

Stamp to be used.—Impressed labels—Rules 6 & 10 (ii); if executed out of British India—Rule 12.

Description of Instrument.	Proper Stamp-duty.
39. Memorandum of Association of a Company—	
(a) if accompanied by articles of association under section 37 of the Indian Companies Act, 1882 (now s. 17 of Act 7 of 1913); •	Fifteen rupees [<i>Duty raised to Rs. 30—in Bengal, Bombay, Madras, Burma, U. P. and Punjab.</i>]
(b) if not so accompanied ..	Forty rupees [<i>Duty raised to Rs. 80—in Bengal, Bombay, Madras, Burma, U. P. and Punjab.</i>]
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1882 (now Act 7 of 1913).	

NOTES.

See Art. 43, Sch. I of Act I of 1879, and Art. 34, Sch. II of Act. XVIII of 1869.

The Companies Act, 1882, is Act VI of 1882. The present Act is Act 7 of 1913. S. 37 of the Act of 1882 corresponds to S. 17 of the Act of 1913.

Exemption.—The *Exemption* was for the first time introduced in 1895 by Notification No. 5199 of 1st November, 1895. S. 26 of the Companies Act, 1882 corresponds to S. 26 of Act 7 of 1913.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (i); executed out of British India—Rule 12.

The duty payable under this Article is different from the fee payable under Table B to the Schedule to the Companies Act, 1913. Compare with Article 10 of this Act *supra* and SS. 112 and 113 of the Stamp Act, 1891 (54 & 55 vict. C. 319) and the English Finance Acts of 1896, 1899, 1920 and 1927.

If the share capital of a company is increased, stamp duty is to be paid on the increase of capital authorized and not on the actual increase, *Attorney General v. Anglo Argentine Tramways Co., Ltd.* (1909) I K.B. 677; 100 L.T. 609; 25 T.L.R. 339. See SS. 112 and 113 of the English Stamp Act, 1891 (54 and 55 vict. C. 39).

Description of Instrument.	Proper Stamp-duty.
<p>40. Mortgage-deed not being an Agreement Relating to Deposit of Title-Deeds, Pawn or Pledge (No. 6), Bottomry Bond (No. 41), Respondentia Bond (No. 56), or Security-Bond (No. 57)—</p> <p>(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;</p> <p>(b) when possession is not given or agreed to be given as aforesaid ;</p> <p><i>Explanation.</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.</p> <p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped—</p> <p>for every sum secured not exceeding Rs. 1,000.</p> <p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.</p> <p>The same duty as a Bond (No. 15) [<i>Bottomry Bond (No. 16) —in Madras</i>] for the amount secured by such deed.</p> <p>Eight annas [<i>raised to 12 annas—in Bengal, Madras, U. P. and Punjab and to Re. 1—in Bombay.</i>]</p> <p>Eight annas [<i>raised to 12 annas—in Bengal, Madras, U. P., Punjab and to Re. 1—in Bombay.</i>]</p>
<p><i>Exemptions.</i></p> <p>(1) Instrument executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p> <p>(2) Letter of hypothecation accompanying a bill of exchange.</p>	

NOTES.

See Art. 44, Sch. I of Act I of 1879 and Arts. 10 and 16, Sch. I of Act XVIII of 1869.

Exemptions.—The Land Improvement Loans Act, 1883, is Act XIX of 1883. The Agriculturists' Loans Act, 1884, is Act XII of 1884.

Amendments.—The words “an Agreements, Relating to Deposit of Title-Deeds, Pawn or Pledge (No. 6)” were substituted for the words “An Agreement to Mortgage (No. 6)” by s. (4) (a) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904). The words “at the time of execution” which occurred between the words “when” and “possession” in cl. (b) were repealed by s. 8 (4) (b) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

The *Exemption* (3) which was in these terms—“(3) Instruments of pledge or pawn of goods if unattested”—was repealed by s. 8 (4) (c) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Stamp to be used.—Impressed stamp—Rule (6); instruments executed out of British India—Rule (12); impressed label—Rule 10 (ii).

Mortgage.—Mortgage under the Article must mean mortgage by consent of parties and not by operation of law. A mortgage contemplated by this section would be a mortgage of immovable property. A mortgage with delivery of possession is either a mortgage by conditional sale or a usufructuary mortgage. A mortgage without delivery of possession would be a simple mortgage. An English mortgage may be with or without delivery of possession. The other kinds of mortgage would be: (1) an equitable mortgage (see Art. 6) by deposit of title-deeds, (2) a pawn or pledge of movable property (Art. 6), (3) a mortgage of a crop (Art. 41), (4) a hypothecation, (5) mortgage by security bond (Art. 57) whereby a person mortgages his property as a guarantor for performance of a contract by another person. In the schedule to the Stamp Act, there is no such entry as a hypothecation or hypothecation bond. A hypothecation differs from a pledge in that there is no delivery of the property; it differs from mortgage in that there is no assignment of the goods by the debtor. See Ghose on Mortgage, 4th Ed. pages 12-15 and 108. It survives in the Stamp Act in a Bottomry bond (Art. 16) or a Respondentia bond (Art. 56) in none of which possession is delivered to the creditor.

Mortgage and pledge.—The distinction between Art. 29 (now Art. 6) and Art. 44 (now Art. 40) of Act I of 1879 is that Art. 29 (Art. 6) is limited to cases where movable property is given in pledge, coupled with an agreement securing repayment of a loan and Art. 44 (Art. 40) covers cases where interest in or rights over property is transferred, whether possession is delivered or not as security for the mortgage money. *In the matter of Ko Shway Aung v. Strang Steel & Co.*, 21 Cal. 241.

Scope.—For the purpose of ascertaining whether an instrument is liable to be stamped under this Article, it must be shown that the instrument is a mortgage deed as defined in the Stamp Act, *Queen Empress v. Debendra Krishna Mitter*, 27 Cal. 557: 4 C.W.N. 524. Where although the word 'pledge' was used the instrument taken as a whole left no doubt that the transaction was really a transfer by way of assurance or a mortgage and the property was ascertainable by reference to the title deeds *i.e.*, the property could be ascertained with reasonable certainty, it was held that the document is a deed of mortgage chargeable under Art. 40, *Verajlal Mulji v. The Secy. of State for India*, 1931 A.I.R. 732 (Cal.).

Construction.—*Agreed to be given.*—Clause (a) applies only to those deeds, in which the possession of the mortgaged property is given or agreed to be given, at the time of the execution of the deed; or in other words, where immediate possession of the property is given or agreed to be given, by the terms of the deed to the mortgagee. Where immediate possession of the property is not given or agreed or intended to be given, the lower duty under clause (b) is chargeable. "The word 'given' in the clause in question seems to point out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security of the mortgage money. But where by virtue of a stipulation in the mortgage deed, the mortgagee becomes entitled to enter upon possession quite irrespective of the consent of the mortgagor to make over possession, the clause in question does not apply." *Anonymous case* 10 Cal. 274 (278, 279).

Cl. (a) of this Article refers to cases where the execution of the mortgage is accompanied by delivery of possession; the words "agreed to be given" are to be read as if the words "at the time of execution" followed the word "given." Cl. (a) of the Article covers cases where the possession of the property mortgaged is deferred to a future date on failure of repayment of the mortgage debt, and no possession being given at the date of the execution of the deed, *Hinganghat Mill Company Ltd. v. Reckchand Bhikamchand*, 8 Bom. 310 F.B. But the effect of amendment by Act XV of 1904, whereby the words "at the time of execution" were repealed, is to modify the above decision as regards the interpretation of the word "given."

Art. 40 (b).—A mortgagor by a deed in the form of an English mortgage gives a certain parcel or piece of land to the mortgagee "to have and to hold" "subject to the proviso for redemption" therein contained. Then there is a covenant that the mortgagee shall permit the mortgagor to retain possession of the premises so long as he shall make the annual payments as stipulated, the net result of which is that the mortgagor remained in possession and thus possession was not immediately given by the mortgagor of the property comprised in the deed. But there was a provision at the end of the document providing that if default is made in payment of certain annual instalments, the mortgagee may at any time thereafter enter into and upon the said piece of land and premises and shall thenceforth quietly possess

and enjoy the same. It was held that the words "at the time of execution" having been repealed in the present Act the cases reported in 10 Cal. 274 and 8 Bcm 310 are no longer authorities and thus the document is one in which possession is not given or agreed to be given. The words "agreed to be given" should not be construed as covering cases of agreement to give possession on the breach of a certain covenant, or on the happening of a future event which may or may not happen, but only to cases where by the words of the document possession is directly given or agreed to be given. Therefore the document falls under Article 40 (b) of the Indian Stamp Act, *The Board of Revenue. Madras v. Moopanna Somoraxal and another*, 49 Mad. 903 : 51 M.L.J. 354 : 1926 M.W.N. 754 : 97 I.C. 993 : 24 L.W. 559 : 1926 A.I.R. 1038 (Mad.).

Art. 40 (c).—Art. 40 (c) of the Indian Stamp Act, 1899 deals with a case in which a separate instrument offering additional or substituted security is executed subsequent to the original mortgage transaction, which had been reduced to writing in a previously completed instrument. When the stipulation as to original mortgage and the collateral security were made simultaneously and were both embodied in one and the same deed Art. 40 (c) does not apply, *Tej Ram v. Maqbul Shah and others*, 108 I.C. 746 : 1928 A.I.R. 370 (Lah.). As to subsidiary stipulation in contract of mortgage, see the cases collected under s. 5 of this Act, *supra*.

Movables.—An agreement by a person in consideration of a certain sum of money to be advanced to him, assigning crop of coffee to that other to secure repayment of the money advanced, with a stipulation that he should cultivate the crop till it is mature and then deliver it, is an instrument of mortgage falling under Art. 44 (4) and Art. 40 (b) of Act I of 1879, as it was assignment of property by way of mortgage, *Reference under the Stamp Act*, 8 Mad. 104 (107) F.B. But this holds good so long as a growing crop is immovable property. Art. 41 would now cover such case.

Compromise.—*Solenamas* creating charge upon immovable property and put in execution of a decree and not embodied in a decree charging the property, which property the plaintiff seeks to sell in order to secure his money, and not relied upon as evidence of a distinctly separate parol agreement but as the hypothecation itself, is one which must be sufficiently stamped, *Surju Prosad v. Bhawani Sahai*, 2 All. 481 (487). See *contra*, *Pitambar Gain v. Uddab Mondal*, 12 C.W.N. 59, where the *solenama* contained a previous agreement and the petition was to inform the court that the case has been compromised. See also *Reference under Stamp Act*, 8 Mad. 15, where the court held that only Court Fee Stamps are to be paid.

Improvement.—A *kanom* of *jenmam* land being a mortgage, is to be stamped under Art. 44 (a) (now Art. 40) of Act I of 1879 and as the value of improvement was paid by the incoming tenant to the outgoing tenant and stated in the instrument, that amount is to be added to the mortgage money in calculating the stamp duty payable, *Reference under Stamp Act*, s. 46, 22 Mad. 164 F.B.

Mortgagor and surety.—When in the mortgage the mortgagor and surety for him jointly and severally covenanted to repay the mortgage debt, the instrument need only be stamped as a mortgage bond, and no separate fee for joining the surety is necessary, *In re Stamp duty leviable on a certain deed executed by M. Ghulam Haider and Abdul Latif in favour of Punjab Banking Co. Ltd., Peshwar*, 15 P.R. 1910: 16 P.W.R. 1910: 4 P.L.R. 1910: 5 Ind. Cas. 812. See also *Nripati Chandra Das v. Emperor*, 21 C.W.N. 758 (761): 40 I.C. 725.

Where G. P. Notes were hypothecated for repayment of a loan, and an instrument was executed evidently as an agreement to secure repayment of a loan with interest, held, that the instrument is a deed of mortgage and is to be stamped under this Article, *Queen Empress v. Debendra K. Mitter*, 27 Cal. 587: 4 C.W.N. 524. Where G. P. Notes were lodged in the District Treasury by a contractor as security for the due and faithful performance by the contractor of his contract, held that the instrument is to be stamped as a mortgage bond, *Reference under Stamp Act, s. 46*, 11 Mad 39. The cases in 27 Cal. 587 and 11 Mad. 39 cannot be said to be good law in view of the enactment of sec. 23A in 1904.

Security bond.—A security bond by the receiver in favour of the court is a mortgage within the meaning of s. 2 (17) of the Stamp Act and must be stamped both under the Court Fees Act and under Article 40 of the Stamp Act, *Amirthammal v. Rdmalinga Goundan*, 43 Mad. 363: 38 M.L.J. 503: 57 I.C. 184 F.B. This judgment appears to be erroneous as it ignores the amendment by Act VI of 1889, s. 18 (4). See other cases under Article 57, *infra*.

Mortgage with a condition.—A mortgage with a condition that the mortgagee will take possession of the property mortgaged on the happening of a future event which might not happen and did not happen, is a simple mortgage and requires stamp under this Article, *Naunhun v. Halka*, 1930 A.I.R. 175 (All.): 124 I.C. 401.

Valuation.—Where certain property was mortgaged for Rs. 180 and afterwards the mortgagor took a further advance and mortgaged the same property for Rs. 250 consisting of Rs. 180 previously borrowed and a fresh advance of Rs. 70, held that it is a new mortgage and the deed is to be stamped on Rs. 250, *In re Megha*, 25 Bom. 370: 3 Bom. L.R. 42; *Reference under Stamp Act, s. 46*, 23 Mad. 207. But if the fresh advance be for the fresh amount borrowed then the stamp is to be on the fresh advance only although it may extend the period of redemption of the original mortgage, *Reference under Stamp Act*, 1 Bom. L.R. 7.

An instrument which is partly a lease and partly a usufructuary mortgage, is a mortgage but "is chargeable with the highest duty which can be imposed on an instrument of either description." *In the matter of a Reference from the Board of Revenue*, s. 46, 8 Cal. 254: 0 C.L.R. 33.

An agreement in the mortgage deed to bear costs and other expenses, does not render the instrument liable to stamp duty on such costs and expenses. *Damodar v. Vaman Rao*, 9 Bom. 435.

Exemption (2).—It can hardly have been intended by the legislature that a debtor in the mortgagor desiring to mortgage his property should be executing a Bill of Exchange and giving a mortgage in the shape of a letter of hypothecation accompanying such bill, and be able to evade the stamp laws and effect mortgage for the duty chargeable only on a Bill of exchange, *Biswanath Bhattacharya v. Govinda Chandra Das and ors.*, 29 C.L.J. 305 (311); 23 C.W.N. 534; 51 Ind. Cas. 88.

Endorsement on a mortgage bond.—A endorsement on the mortgage bond by the mortgagor acknowledging the receipt of the principal amount together with interest is exempt from duty as a receipt under Art 53 exemption (a) of the Indian Stamp Act, 1899. *Reference under the Stamp Act, s. 46, 10 Mad. 64.*

Description of Instrument.	Proper Stamp-duty.
<p>41. Mortgage of a crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—</p>	
<p>(a) when the loan is repayable not more than three months from the date of the instrument—</p>	
<p>for every sum secured not exceeding Rs. 200 „ „ „ „ „</p>	<p>One anna [<i>One a and a half annas—in Bengal and Punjab and two annas—in Bombay, Madras and Burma.</i>]</p>
<p>and for every Rs. 200 or part thereof secured in excess of Rs. 200 „ „</p>	<p>One anna [<i>One and a half annas—in Bengal and Punjab, and two annas in Bombay, Madras and Burma.</i>].</p>
<p>(b) when the loan is repayable more than three months, but not more than eighteen months, from the date of the instrument—</p>	
<p>for every sum secured not exceeding Rs. 100 „ „</p>	<p>Two annas [<i>Three annas—in Bengal, Madras, and Punjab and four annas—in Bombay and Burma.</i>]</p>
<p>and for every Rs. 100 or part thereof secured in excess of Rs. 100.</p>	<p>Two annas [<i>Three annas—in Bengal, Punjab and Madras, and four annas—in Bombay and Burma.</i>]</p>

NOTES.

This Article is new. The Article would apply whether the crop is in existence or not.

The case of *Moran v. Mithu Bibi*, 2 Cal. 58, in so far as it held that a mortgage of a crop not *in esse* is not a mortgage is no longer good law for purposes of this Act.

A mortgage of a growing crop of coffee in an estate to secure repayment of money advanced is a mortgage and Article 44 (b) of Act I of 1879 governed the case (now this Article would govern the case). *Reference under Stamp Act*, s. 46, 8 Mad. 104.

Amendments.—The words eighteen months in clause (b) were substituted for the words “one year” by s. 7 (2) of the Indian Stamp (Amendment) Act, 1906 (5 of 1906). The words “two annas” in the second column corresponding to clause (b) were substituted for “four annas” by s. 8 (5) of Act 15 of 1904.

Stamp to be used :—

One anna—Adhesive stamp—s. 11 or coloured impression—Rule 8.

Two annas—Adhesive stamp—Rule 16.

Three annas—Impressed stamp—Rule 6 or Rule 10 (i).

Description of Instrument.	Proper Stamp-duty.
<p>42. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.</p> <p><i>See also</i> PROTEST OF BILL OR NOTE (No. 50).</p>	<p>One rupee [<i>raised to Rs. 1-8-0—in Madras and to Rs. 2—in Bengal, Bombay, Punjab, U. P. and Burma</i>].</p>

NOTES.

See Art. 45, Sch. I of Act I of 1879, and s. 3 (20) and Art. 28 of Act XVIII of 1869.

Stamp to be used.—Adhesive stamp, s. 11 (d); Special foreign bill stamps bearing the word “Notarial”—Rule 17 (d).

Notary public.—A notary public is one who publicly attests deeds or writing, to make authentic in another country—*Tomlins*.

Notarial Act.—A Notarial Act is either the act of authenticating or certifying a document, endorsement, certificate or entry, by a written instrument under the signature or official seal of a notary; or an instrument, attestation or certificate, made or signed by a notary in the execution of the duties of his office—*Brooke*.

Description of Instrument.	Proper Stamp-duty.
<p>43. Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal</p> <p>(a) of any goods exceeding in value twenty rupees ; </p> <p>(b) of any stock or marketable security exceeding in value twenty rupees.</p> <p>..</p> <p>[In Bombay.]—</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees, not being a government security ;</p> <p>(bb) of a Government security ;</p>	<p>Two annas [<i>raised to three annas—in Bengal, Madras, Punjab, and U. P. and to four annas—in Burma and Bombay</i>].</p> <p>Subject to a maximum of ten rupees, [<i>Rs. 15—in Bengal, Madras, Punjab, and U. P. and Rs. 20—in Burma</i>] one anna [<i>2 annas—in Bengal, Madras, Punjab, U. P. and Burma</i>] for every Rs. 10,000 or part thereof of the value of the stock or security.</p> <p>Two annas for every Rs. 5000 or part thereof of the value of the stock or security.</p> <p>Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof of the value of the security].</p>

NOTES.

See Art. 46, Sch. I of Act I of 1879, when it was first enacted.

Amendment.—The present Article, has been substituted for the original Article by s. 3 (*iv*) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

Stamp to be used.—Special adhesive stamp bearing the words "Agreement" or "Brokers' note"—Rule 17 (*f*) ; or coloured impression—Rule 8.

Note sent by a broker.—This kind of Note is known as a "Contract Note" under the English law. A Contract Note means the note sent by a broker or agent to his principal, or by any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not

include a note sent by a broker or agent to his principal where the principal is himself acting as a broker or agent for a principal, and is himself either a member of a stock exchange in the United Kingdom or a person who bona fide carries on the business of a stock-broker in the United Kingdom, and is registered as such in the list of stock-brokers kept by the Commissioner. (Sec. 77 of the English Finance Act, 1910).

Bought and sold Notes.—The practice of licensed brokers is to keep books, wherein they enter or register the terms of any contract they effect, and the names of the parties, which is legally binding; as when the broker for a seller treats with a buyer, he is deemed the agent of both, and he, in strictness, should sign the book, and deliver a transcript or memorandum thereof to each party, which is called a "bought and sold note" and contains all particulars. As these notes contain the essential parts of the bargain, they will suffice in the absence of a corresponding entry in the broker's book, but if these notes describe the particulars differently or incorrectly, as one species of goods for another, or erroneously state the terms, no contract arises, and a variation of this nature cannot be corrected by a reference to the broker's book—*Tomlins*.

See also under "Bill of Exchange": *supra*.

Bought and sold notes with arbitration clause.—A contract for or relating to the sale of goods comprised in bought and sold notes with a clause to refer to arbitration any dispute that may arise under the arbitration rules of the Bengal Chamber of Commerce, is chargeable with a stamp duty of two annas on each note, *The Bombay Company Ltd., v. The National Jute Mills Co., Ltd.*, 39 Cal. 669: 16 I.C. 153. See also *Baijnath v. Ahmed Moosaji Saleji*, 40 Cal. 299: 17 C.W.N. 395: 18 I.C. 978, on appeal from *Hurdwary Mull v. Ahmed Musaji Saleji*, 13 C.W.N. 63: 1 Ind. Cas. 371.

Where an instrument contains an agreement of the nature of a note or memorandum it is chargeable under Art. 46 (Art. 43) of Act I of 1979 and the rule equally applies whether it is contained in one note or more, *S. A. Ralli v. Caramalli Fazal*, 14 Bom. 102. If such note contains an agreement for reference to arbitration, that clause would not render the note liable to a fresh stamp duty, *Kyd v. Mahomed*, 15 Mad. 150.

Description of Instrument.	Proper Stamp-duty.
<p>44. Note of Protest by the Master of a Ship.</p> <p><i>See also</i> PROTEST BY THE MASTER OF A SHIP (No. 51).</p> <p>ORDER FOR THE PAYMENT OF MONEY. See BILL OF EXCHANGE (No. 13).</p>	<p>Eight annas [raised to Rupee one--in Bengal, Bombay Madras, U. P and Burma.]</p>

NOTES.

See Art. 47, Sch. I of Act I of 1879; Art. 12, Sch. II of Act XVIII of 1869.

Stamp to be used.—Adhesive stamp—s. 11 (d); special adhesive stamp—Rule 17 (d) and Rule 10 (i).

Note of protest.—A “note of protest” is made in a book kept by a Notary Public and relates to perils of the seas causing damage and sets out material facts causing damage, &c. This note is made by the Notary himself.

Master.—“Master” used with reference to a ship shall mean any person (except a pilot or harbour master), having for the time being control or charge of the ship, *The General Clauses Act* (X of 1897), s. 3 (32). See also notes under Art. 51 *infra*.

Description of Instrument.	Proper Stamp-duty.
45. Partition —Instrument of [as defined by s. 2 (15)].	<p>The same duty as a Bond (No. 15) [<i>Bottomery Bond</i> (No. 16)—<i>in Madras</i>] for the amount of the value of the separated share or share of the property.</p> <p><i>N.B.</i>—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated :</p> <p>Provided always that—</p> <p>(a) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight</p>

Description of Instrument.	Proper Stamp-duty.
	<p>annas [<i>twelve annas—in Bengal, Madras, U.P. and Punjab, and Rupee one—in Bombay</i>]:</p> <p>(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue :</p> <p>(c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas [<i>twelve annas—in Bengal, Madras, Punjab, U. P. and Rupee one—in Bombay</i>].</p>

NOTES.

See Art. 37, Sch. I of Act I of 1879, and Art. 18, Sch. I and Art. 39, Ch. II of Act XVIII of 1869.

Report of the Select Committee.—The Select Committee reported on this Article:—"We have inserted provision reducing the duty in the case of partitions. The Bill as originally drawn imposed in the case of a partition a duty calculated on the value of the whole of the property partitioned, but gave the Revenue Authority or Civil Court power to permit the duty upon such portion as remained undivided. We have altered the duty so as to make it leviable only on the value of the shares divided off; and we have further based the levy of the duty on the assumption that at whichever partner's instance a partition takes place, it is the smaller shares that are separated from the larger, and not the larger that is separated from the smaller. It seems to us that the operation is the same whether it is the larger or the smaller shareholder who is the initiator, and the taxation on the transaction should not be different in the two cases.

The following illustrations will show how the alteration in the law proposed by us will operate if adopted :—

Four equal shareholders, each having a four-anna share agree to partition. The duty is levied on twelve-anna of the value of the property.

Of three shareholders, having respectively shares of one-half, one-third and one-sixth, two apply to have their shares partitioned off. The duty is levied on half the value of the property.

One shareholder having two-thirds of a property, obtains separation from the remainder who hold jointly one-third, and who desire to continue to hold their share jointly. The duty is levied on one-third of the value of the property.” •

The Hon'ble Sir James Westland in his speech in the Legislative Council said as follows :—

“In the case of partitions we have had to make a somewhat peculiar provision. In the Bill as it was first introduced, the duty payable in respect of partition was a duty levied in respect of the value of the whole property partitioned, but at the same time authority was given to the Revenue Officer or the Court under whose directions the partition was carried out, to relieve from its share of the duty that portion of the property which remained outside the partition, or continued to be held undivided. Well, in this instance the duty is, beyond doubt, rather a heavy one in the case of the separation of only a small share of a very large estate, and we have assumed, therefore that the duty should be remitted on the principle under which under s. 29 of the Bill we have given authority to the Revenue Officer or the Civil Court to remit it; and *we have, therefore, levied the duty not upon the whole of the property, but only upon that part of it which is separated off.* The result of the existing law would be that if several partners holding a 12 annas share agreed to let a four-anna partner separate off his share they would have to pay upon the value of the whole 16 annas. It afterwards the 12 annas share again had to be partitioned, that 12 annas share would again have to pay upon the whole of the value of it. By arranging that the duty shall only be levied upon that part of the estate which is partitioned off from the rest, we prevent that which seems to be an injustice, namely, the demand of duty in respect of both of the partitioned and of the unpartitioned portion of the estate. *Although we levy duty only in respect of the value of the separated off portion of the estate, it must be remembered that the duty as a whole is a burden upon the whole estate, so that the partners, who remain undivided have got to bear their share although the share they bear is a much smaller one than they have to bear under the existing law.*”

Calculation of duty.—A question as to stamp duty payable on an award for partition having arisen, a reference was made to the High Court. The property was to be divided into four shares but one of the shares is to be double of each of the others. The High Court said : “The award therefore in this case is governed by Art. 45 in the Schedule to the Stamp Act. The duty payable according to the

second column of that Article is the stamp duty as on a bond for the amount of the value of a separated share or shares in the property. Then a note explains that the largest share remaining after the property is partitioned shall be deemed to be that from which the other shares are separated. Here the whole property dealt with by the award is divided into four shares being in the proportion of two to each of the other three shares. The largest share after the property is partitioned is the share which is double the value of the other shares. The value of the property being Rs. 80,000, the value of the 2/5ths of it which is the property from which the other shares are deemed to be separated is Rs. 32,000 and the stamp duty payable on the award is as on a bond for Rs. 48,000 which is the value of the separated shares. Under Article 15 the duty for a bond of Rs. 48,000 is Rs. 240. This, we hold, is the proper stamp duty payable on the award" *Collector of Vizagapatnam v. Krishna Chandra Kharasradha Patnaik and others* 52 Mad. 1 F.B. : 1928 A.I.R., 1181 (Mad.) : 28 L.W. 614 : 55 M.L.J. 584 : 115 I.C. 824 F.B.

Valuation.—The valuation on which the stamp duty is to be assessed is the market value of the property of share and not the value under the Court Fees Act. Under the *old law* stamp duty was payable on the entire value of the property to be partitioned irrespective of the share to be partitioned off, *Reference by Board of Revenue*, 2 All. 664 F.B.

Where properties are subject to encumbrance.—The value of the properties to be amongst co-owners is the market value of the properties *minus* the encumbrances charged upon the properties. *Madras Board's Proceeding No. 295, 13th May 1881.* In case the properties are subject to mortgage, the interest due should also be deducted to arrive at the market value. *Madras Board's Proceeding No. 474—R. Misc. 16th April, 1918.*

Payment of stamp.—For liability of a co-sharer to pay stamp duty see s. 29 (g) *supra* and the cases noted thereunder. The stamp duty payable on an instrument of partition should be apportioned according to s. 29 (e) of the Stamp Act. *Reference under Stamp Act. s. 46, 15 Mad. 164.* See also *Reference under Stamp Act, s. 46, 18 Mad. 233.*

Final order—meaning of.—See cases noted under s. 2 (15) *supra*.

Kind of stamp to be used.—A decree for partition, in order to be operative, must be engrossed on stamp paper as required by the Stamp Act, *Jaindra Mohan Tagore v. Bejoy Chand Mahatap*, 32 Cal. 483 (491). See also *Thiruwengadathamiah v. Mungiah and another*, 35 Mad. 26 : (1911) 2 M.W.N. 576 : 12 I.C. 775 ; *Balaram Budharam Marvadi v. Ramkrishna*, 29 Bom. 366 : 7 Bom. L.R. 308.

In drawing up decree under this Article only *non-judicial* stamps are to be used and not court-fee stamp. If by mistake a court-fee stamp is used, then no refund can be obtained under s. 52 of this Act, although non-judicial stamp may have been supplied afterwards. *Shaikh Rafiuddin v. Latif Ahmad*, 14 C.W.N. 1101 : 12 C.L.J. 324 :

2 Ind. Cas. 94; *Hemchandra Mahto and others v. Prem Mahto*, 1925 Pat. C.W.N. 330 : 90 I.C. 739.

Impressed stamps are to be used—Rules 6 and 10 (ii).

Hissanama.—A hissanama (a document dated 1239 B. S.) which purported to record the fact that the predecessor of the plaintiffs had an eight annas share in the property, and which was acted on for over 60 years, is only a record of the family arrangement and therefore did not require to be either stamped or registered, *Bhudeb Chatterjee and others v. Ashutosh Gangopadhyia and others*, 1928 A.I.R. 705 (Cal.): 48 C.L.J. 279 : 112 I.C. 326.

Under Act X of 1832.—When an instrument of partition was executed in duplicates, each sharer's copy was required, under Act X of 1832, to be stamped, *Narayan Raghunath v. Kashinath Vidyadhar*, 8 Bom. 299. But under the present Act, the duplicates and triplicates will be stamped under Art. 25.

Description of Instrument.	Proper Stamp-duty.
46. Partnership—	
A—INSTRUMENT OF—	
(a) where the capital of the partnership does not exceed Rs. 500;	Two rupees eight annas [<i>five rupees—in Bengal, Bombay, Madras and Burma, and three rupees twelve annas—in U.P.</i>]
(b) In any other case	Ten rupees [<i>Twenty rupees—in Bengal, Bombay, Madras, U.P. and Burma.</i>]
[In U. P.—	
(b) where the capital exceeds Rs. 500 but does not exceed Rs. 2000.	Seven rupees eight annas
(c) in any other case	Fifteen rupees]
B—DISSOLUTION OF	Five rupees [<i>Ten rupees—in Bengal, Bombay, Madras, U.P. and Burma.</i>]
[PAWN OR MORTGAGE—See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)].	

NOTES.

See Arts. 32 and 33, Sch. I of Act I of 1879, and Art. 26, Sch. II Act XVIII of 1869.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Partnership.—Partnership is the relation which subsists between persons, who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them, *The Indian Contract Act*, s. 339. See also ss. 240 to 244 of the Indian Contract Act. As to partnership in a wine shop, *Chinnaiya v. Multusvamiy*, 1 Mad. H.C.R. 226.

Description of Instrument.	Proper Stamp-duty.	
	If drawn singly	If drawn in duplicate, for each part.
[PAWN OR PLEDGE.—See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)].		
47. Policy of Insurance—		
A—SEA-INSURANCE (see section 7)—		
(1) for or upon any voyage—		
(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy ;	One anna.	Half an anna
(ii) in any other case, in respect of every full sum of one thousand five hundred rupees and also any fractional part of one thousand five hundred rupees insured by the policy ;	One anna	Half an anna.
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months ;	Two annas.	One anna.
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	Four annas.	Two annas.

Description of Instrument.	Proper Stamp-duty.	
	If drawn singly.	If drawn in duplicate, for each part.
B.—FIRE-INSURANCE and other classes of insurance, not elsewhere included in this Article, covering goods, merchandise, personal effects, crops and other property against loss or damage—		
(1) in respect of an original policy—		
(i) when the sum insured does not exceed Rs. 5,000 ;	Eight annas.	
(ii) in any other case and	One rupee.	
• • (2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.	
C.—ACCIDENT, AND SICKNESS-INSURANCE—		
(a) against railway accident, valid for a single journey.	One anna.	
<i>Exemption.</i>		
When issued to a passenger travelling by the intermediate or the third class in any railway.		
(b) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceeds Rs. 1,000 for every Rs. 1,000 or part thereof.	Two annas.	
	Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs. 2-8-0 per Rs. 1,000, the duty on such instrument shall be one anna for every Rs. 1,000 or part thereof of the maximum amount which may become payable under it.	
CC.—INSURANCE BY WAY OF INDEMNITY against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.	One anna.	

Description of Instrument.	Proper Stamp-duty.	
	If drawn singly	If drawn in duplicate, for each part.
D.—LIFE-INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE as is described in Division E of this article—		
(i) for every sum insured not exceeding Rs. 250—	Two annas.	One anna.
(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500.	Four annas.	Two annas.
(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1000.	Six annas	Three annas.
<i>Exemptions.</i>		
Policies of life-insurance granted by the Director-General of the Post office in accordance with rules for Postal Life-Insurance issued under the authority of the Governor General in Council.		
E—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY OF THE NATURE SPECIFIED IN DIVISION A OR DIVISION B OF THIS ARTICLE with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.	One-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.	
<i>General Exemption.</i>		
Letter of cover or engagement to issue a policy of insurance :		
Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.		

NOTES.

See Art. 49, Sch. I of Act I of 1879, and Art. 3, Sch. I of Act XVIII of 1869. See sections 97, 98, 99 and 100 of the English Act, 1891 (54 and 55 Vict. C. 39).

Amendments.—The clauses B and E of this Article have been amended by Act 43 of 1923.

Clauses A (1) (ii), C (ii) and D were amended by the Repealing and Amending Act, 1928 (Act XVIII of 1928). The divisions A and B were substituted for the original divisions A and B by s. 7 (3) of the Indian Stamp (Amendment) Act, 1906 (5 of 1906), and divisions B and E were again amended by Act 43 of 1923. The clause (cc) was introduced by Act XV of 1925, sec. 2.

Stamp to be used.—Special adhesive stamp bearing the word "Insurance"—Rule 17 (g); See also s. 11 and Rule 8.

Policy of Insurance.—See s. 2 (19) *supra*; *Insurance*.—See s. 2 (20) and s. 7 *supra*.

Jokhmi Hundi.—A jokhmi hundi would appear to have been designed with a double purpose, *viz.*, to put the drawer of the hundi, in funds, and, at the same time to effect the insurance upon the goods themselves, by reversing the position of the insurer and insured from that which obtains in ordinary policies, the insurer being buyer of the hundi who pays the insurance money down, and is entitled to recover it with a premium (together making the amount of the hundi) in case the vessel arrives safely; *Jadlowji Gopal & ors. v. Jetha Shamji*, 4 Bom. 333, (340).

Sea Insurance.—See the case of *In re Marine Insurance Certificate*, 19 Bom. 130 F.B. under s. 2 (20) *supra*.

Life Insurance.—See also the Indian Life Insurance Companies Act (Act VI of 1912),

An entrance certificate granted under rules of the Uncovenanted Civil Service is a Life Policy within the meaning of s. 3 (15) [now s. 2 (19)] of the General Stamp Act and is to be stamped under this Article. *Reference under Stamp Act*, s. 46, 19 Cal. 499.

A certificate of membership issued by a Provident Society in the following terms :—"You have on condition of your conforming to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age, etc." does not come under Art. 17 but falls under Art. 47 (d) and is liable to be stamped with an *ad valorem* duty, *In re Himmat Provident Society Ltd.*, 25 Bom. 376 : 3 Bom. L.R. 43.

Exemption.—*Letter of cover.*—Letter of cover is an engagement to issue a policy of insurance. This is issued to the proposer when a proposal to insure is made and the proposer deposits a portion of the premium. "A letter of cover may be in form a letter of cover still if in terms it satisfies the requirement of the definition of policy of sea

insurance within the meaning of the Indian Stamp Act, such a document is required to be stamped and received in evidence on payment of duty and penalty," *Tricamji Damji v. Virji*, 24 Bom. L.R. 820.

Remission of duty.—The Governor General in Council is pleased to reduce the duty chargeable under clause (d) of Article 47C of Schedule I to the Indian Stamp Act, 1899, on a policy of Insurance against death by accident only, the annual price payable on which does not exceed Rs. 2-8-0 per Rupees 1000, from two annas to one anna for every Rs. 1000 or part thereof of the maximum amount which may become payable under the policy, (*Published in the G. of India Part 1, Page 93, dated February 4, 1928*).

Description of Instrument.	Proper Stamp-duty.		
48. Power-of-Attorney [as defined by section 2 (21)], not being a PROXY (No. 52),—		In Bengal & Madras.	In Bombay, Punjab & Burma.
		Rs. A. P.	Rs. A. P.
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;	Eight annas.	0 12 0	1 0 0
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 [under the Rangoon Small Cause Courts Act, 1920—in Burma] .	Eight annas.	{ 1 0 0 in Bengal 0 12 0 in Madras }	1 0 0
(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a) ;	One rupee.	1 8 0	2 0 0
(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally ;	Five rupees.	7 8 0	10 0 0
(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;	Ten rupees.	15 0 0	20 0 0

Description of Instrument.	Proper Stamp-duty.
(f) when given for consideration and authorising the attorney to sell any immoveable property ;	The same duty as a Conveyance (No. 23) for the amount of the consideration.
(g) in any other case	One rupee [<i>Rupees 1-8-0—in Bengal and Madras and rupees Two—in Bombay, Punjab and Burma</i>] for each person authorised.
	N.B.—The term “registration” includes every operation incidental to registration under the Indian Registration Act, 1877 (<i>now 1908</i>).
<i>Explanation.</i> —For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.	

NOTES.

See Art. 50; Sch. I of Act 1 of 1879, and Arts. 13, 19 and 22, Sch. II of Act XVIII of 1869. The Indian Registration Act, 1877 is Act III of 1877 but the present Act is Act 16 of 1908.

This Article would apply to all powers of attorney excluding those executed in favour of a pleader, a muktear practising in courts of law, in which cases, the Court Fees Act will apply.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Construction.—“*Single transaction.*”—The expression “single transaction” in Art. 48 (c), Sch. I of the Stamp Act applies either to a single act or a series of acts so related to each other, as to form one judicial transaction, such as all the acts necessary to perfect a mortgage or a sale of a particular property, *Venkataramana v. Narasinga Rao*, 38 Mad. 134 : 24 M. L. J. 180 : 1913 M. W. N. 72 : 18 I.C. 135.

Scope.—Clauses (a), (b) and (c) relate to an authority for procuring the registration of a document or documents or admitting the execution of one or more of such documents for registration or for acting in any other manner in a single transaction. Clause (d) which apparently relates to a general power of attorney, speaks of authority to not more than five persons, “to act jointly and severally in more than one transaction or generally.” Clause (e) relates to a similar authority to more than five but not more than three persons.—*Ibid.*

Where a power-of-attorney is executed in favour of a person who is not a certificated pleader or a mukhtear under the Legal Practitioners Act, the instrument should be stamped with a stamp provided

by Art. 48 of the Stamp Act; and not with a Court Fee Stamp under the Court Fees Act, *Permanand v. Sat Pershad*, 8 All. L.J. 378: 9 Ind. Cas. 617: 33 All. 487 F.B.

The definition of power-of-attorney in section 2, sub-section (21) of the Act, and the classification of such powers in the said Article makes it clear that in computing the stamp duty payable on a power-of-attorney the Legislature takes no account of the number of persons executing the power. It is the number of agents appointed and the powers of such agents which determine the amount of stamp duty, *Jogi Ram v. Mohammad Rafi*, 80 I.C. 467: 1925 A.I.R. 132 (Oudh).

What is a power-of-attorney.—Where a sum of money was ordered to be refunded to 36 persons who executed an instrument in favour of P who is not a pleader or mukhtear of any court, to receive the money on their behalf and sign the refund bill, *held that the document is a power of attorney*, *Reference under Stamp Act*, s. 46, 9 Mad. 358.

Where an instrument was executed by the mirasdars of a village authorising a person, whose name was mentioned in the instrument, to recover on their behalf the perquisites and other income by suit to cultivate their lands, etc., and to sign vakalatnamas on their behalf and conduct proceedings, etc., in courts, and to distribute the collection amongst them proportionately, *held that the instrument is a power of attorney*, *Reference under Stamp Act*, s. 46, 15 Mad. 386.

A power-of-attorney, which enables an agent to realize a judgment debt belonging to his principal and by which the agent, is authorized to institute, if necessary, a suit and to execute the decree for that purpose falls within cl. (d) of Art. 48 of the Stamp Act, *In re Gopal Rao*, 3 Bom. L.R. 890.

Power-of-attorney executed outside British India.—Where a power-of-attorney was executed in England unstamped but was stamped in British India, the High Court held that the power, which was stamped according to the provisions of the Indian Stamp Act, was valid for the purposes it was intended to meet, *In the goods of McAdam*, 23 Cal. 187.

An instrument which authorizes a person to receive a sum of money and sign a receipt but not in the name of the person executing the instrument is not a power-of-attorney, *Tribhawan v. Pandurang*, 3 Bom. L.R. 697.

Copy of a power of attorney.—Where a plaintiff sued through his agent holding a general power of attorney, which was produced for verification and a copy of it left on the record held that the copy need not be stamped as the original was never on the record, and there is no law which requires it to be so placed, *Rustomji and Ors. v. Kala Singh and Ors.*, 9 P.R. 1918: 13 P.W.R. 1917: 43 Ind. Cas. 383.

Explanation.—*Firm.*—The word is not defined in this Act but in the Indian Contract Act s. 239, it is defined as persons, who have entered into partnership with one another, are collectively called a "firm."

Description of Instrument.	Proper Stamp-duty.
<p>49. Promissory note, [as defined by section 2 (22)]—</p> <p>(a) when payable on demand—</p> <p>(i) when the amount or value does not exceed Rs. 250 ;</p> <p>(ii) when the amount or value exceeds Rs. 250, but does not exceed Rs. 1,000 ;</p> <p>(iii) in any other case</p> <p>(b) when payable otherwise than on demand.</p>	<p>One anna.</p> <p>Two annas.</p> <p>Four annas.</p> <p>The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.</p>

NOTES.

See Art. 11, Sch. I of Act I of 1879, and Art. 2, Sch. I of Act XVIII of 1869. .

Amendments.—This Article has been amended by Act 43 of 1923.

As to duty payable on promissory notes executed between 20th September, 1923 and 5th January, 1925 see Act XIII of 1924 and Act XI of 1926 whereby promissory notes bearing a stamp of one anna were validated.

Stamp to be used.—(a) Adhesive stamps—s. 11 and Rule 13 (f) ; may be for postage and revenue—Rule 16 ; (b) Impressed labels—Rule 5.

Payable on demand.—A promissory note in which no time for payment is specified, is a note payable on demand. See s. 19 of the Negotiable Instruments Act (Act XXVI of 1881).

Promissory Note.—A note to the following effect :—"My dear sister M. Be it known that Rs. 750, on account of the former note of hand, and Rs. 975, are due to you by me. I promise to pay you this sum in two months. I am already negotiating for a loan from another place. Rest assured, no harm will come to your money, and for your assistance and security this note of hand is given to you, keep this as a voucher, and consider the former note of no use ; at the time of payment this note is to be returned to me ;" *held* this is a promissory note and not a note or a memorandum. *Makbul Ahmed v. Mt. Iftikhan-un-nissa*, 7 N.W.P. 124.

Collateral agreement.—Where a promissory note is payable on demand it is to be stamped on the amount stated in the instrument although there may be collateral agreement between the parties that

the holder will not present it for sometime, *Chunder Kant Mookherjee v. Kartic Chunder Chaitle*, 14 W.R. 38 : 5 B.L.R. 103.

Interest.—A promissory note is sufficiently stamped if the stamp is sufficient to cover the principal sum advanced. The interest that would accrue need not be considered, *L. Gomes v. L. Young*, 12 W.R. 1 (A.O.J.) : 2 B.L.R.O.C. 165.

Interest in default.—A promise to pay interest on default of payment at the fixed time does not render an instrument which is in form a promissory note, a bond, *Nundun Misser v. Musst. Chithu Buttee*, 21 W.R. 446 : 13 B.L.R. App. 33 ; *Bansidhar v. Bu Ali Khan*, 3 All 260 F.B. ; *Gurditta Mal v. Dhanma Singh*, 14 P.R. 1902 : 33 P.L.R. 1902.

Effect of not cancelling the stamp.—Where the adhesive stamp on the promissory note has not been cancelled as required by s. 12, it is to be considered as unstamped, *Maung Ba Kywan v. Ma Kyi Kya*, 2 L.B.R. 102.

Payable otherwise than on demand.—Promissory notes payable otherwise than on demand are liable to a higher duty. Bills of exchange (Art. 13) payable not more than one year after date or sight are to be stamped as a bond.

Description of Instrument.	Proper Stamp-duty.
50. Protest of Bill or Note , that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	One rupee [<i>raised to Rs. 2—in Bengal, Bombay, Madras, Punjab, U. P. and Burma</i>].

NOTES.

See Art. 50, Sch. I of Act I of 1879, and Art. 24, Sch. II of Act XVIII of 1869. See s. 90 of the Stamp Act, 1891 (54 and 55 Vict. C. 39).

Stamp to be used.—Adhesive stamp—s. 11 as it is a notarial Act. See also Rule 17 (d) where a special foreign bill stamp is prescribed.

Protest bill or note.—The principal business of a Notary Public in London and elsewhere in England, is to protect foreign bills of exchange and inland bill of exchange and notes which later on if protested to be at the charge of the holder, if paid on the day of protest. It is not imperative on holder of inland bills to cause them to be protested. As to protests in India see s. 100 of the Negotiable Instruments Act (Act XXVI of 1881).

Dishonour of a bill of Exchange or promissory note.—A bill of exchange may be said to be dishonoured by non-acceptance, when

the drawee, or one of the several drawees, not being parties makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured—*The Negotiable Instruments Act* (Act XXVI of 1881), s. 91.

Description of Instrument.	Proper Stamp-duty.
<p>51. Protest by the Master of a ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.</p> <p><i>See also NOTE OF PROTEST BY THE MASTER OF A SHIP (No. 44).</i></p>	<p>One rupee [<i>Two rupees—in Bengal, Burma, U. P, Bombay and Madras.</i>]</p>

NOTES.

See Art. 50, Sch. I of Act I of 1879, and s. 3 (28), Art 50, Sch. II of Act XVIII of 1869.

Stamp to be used.—Adhesive stamp—s. 11, as the action is also by a notary; see also Rule 17 (d) where a special notarial label is prescribed.

Protest.—The protest is made in the book of a notary, the name of the vessel, of the master of the vessel, the voyage and the full particulars of the danger being given. The object is to protect the master and the mariners from the charge of neglect and illegal action.

Description of Instrument.	Proper Stamp-duty.
<p>52. Proxy empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the funds of any institution.</p>	<p>Two annas.</p>

NOTES.

See Art. 51, Sch. I of Act I of 1879, and s. 3 (29), Art. 8, Sch. II of Act XVIII of 1869. See s. 80 of the Stamp Act 1891 (54 and 55 vict. C. 39).

Amendments.—The words “two annas” were substituted for “one anna” by Act 43 of 1923, s. 2 (i).

Stamp to be used.—Adhesive postage an revenue—Rules 13 (f) and 16; and coloured impression—Rule 8.

Reduction of duty.—The duty of two annas indicated above had been reduced to one anna in case of proxies empowering persons to vote at meetings of creditors (*See the Gazette of India December 5, 1925, Part I, page 1168*) but by a later notification dated 12th January, 1926 the duty chargeable on a proxy empowering a person to vote at a meeting of creditors has been brought to the rate chargeable on a proxy empowering a person to vote at any one meeting of members of an incorporated company (*vide Gazette of India 1926, Part I, page 132*).

Description of Instrument.	Proper Stamp-duty.
<p>53. Receipt [as defined by section 2 (23)] for any money or other property the amount or value of which exceeds twenty rupees.</p>	One anna.
<p><i>Exemptions.</i></p>	
<p><i>Receipt—</i></p>	
<p>(a) endorsed on or contained in any instrument duly stamped, or any instrument exempted under the proviso to section 3 (instruments executed on behalf of the Government) or any cheque or bill of exchange payable on demand acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured;</p>	
<p>(b) for any payment of money without consideration;</p>	
<p>(c) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of Inam lands;</p>	

Description of Instrument.	Proper Stamp-duty.
<p>(d) for pay or allowances by non-commissioned officers, soldiers or airmen of His Majesty's military or air forces, when serving in such capacity, or by mounted police-constables ;</p> <p>(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer, soldier or airmen of any of the said forces and serving in such capacity ;</p> <p>• • (f) for pensions or allowances by persons receiving such pensions or allowances in respect of their services as such non-commissioned officers, soldiers or airmen and not serving the Government in any other capacity ;</p> <p>(g) given by a headman or lambar-dar for land-revenue or taxes collected by him ;</p> <p>(h) given for money or securities for money deposited in the hands of any banker, to be accounted for ;</p> <p>Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :</p> <p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.</p>	

NOTES.

See Art. 52, Sch. I, of Act I of 1879, and Art. 7, Sch. II of Act XVIII of 1869. As to exemptions see Art. 15, Schedule II of Act I of 1879. See also s. 101 of the Stamp Act, 1891 (54 and 55 vict. C. 39).

Amendments.—The words “Soldiers or airmen..... forces” in clauses (d) and (e) and the words “Soldiers or airmen” in clause (f) of the *Exemptions* were substituted by the Repealing and Amending Act 1927 (10 of 1927).

The words “any instrument” and “or any cheque or bill of exchange payable on demand” in clause (a) of the *Exemptions* were added by the Repealing and Amending Act, 1928 (Act XVIII of 1928).

Stamp to be used.—Adhesive stamps—s. 11 and Rules 16 and 8.

Receipt.—As to what is a receipt and what is not a receipt see cases under s. 2 (23). *Supra*. Penalty can be levied in respect of an unstamped receipt, See sec. 35 proviso (A).

Receipts granted by Municipality.—A receipt granted by a Municipality on payment of Municipal taxes is a receipt and if the amount exceeds Rs. 20 must be stamped. Such a receipt is granted for payment in discharge of a legal obligation and is not a payment without consideration, *In re Karachi Municipality*, 12 Bom. 103.

Salaries of Government officers.—A salary bill of an officer of Government is receipt and is to be stamped under this Article, *Queen Empress v. Rahat Ali Khan*, 9 All. 210.

Acknowledgments—Letters to persons who paid money acknowledging receipt of amounts over Rs. 20 should be stamped with one anna stamp, *Reference under Stamp Act*, 8 Mad. 11; *Queen-Empress v. Multi Rulandi*, 11 Mad. 329. A receipt granted by an agent on behalf of his principal for money due requires a stamp, *Empress v. Ashutosh*, (1885) 5 A.W.N. 266.

A receipt granted by the Secretary or Manager of a club for payments by members over Rs. 20 is liable to duty as receipt as it is an acknowledgment of a payment made in satisfaction of a demand under the rules of the club, *Reference under Stamp Act*, 10 Mad. 85 F. B. Receipts for money received from registered Co-operative Credit Societies by share-holders do not require stamp under rules under that Act, (See Act II of 1912).

A document reciting a past transaction and stating that the receipt is given on receiving part of the consideration and for the balance another receipt will be given, is a receipt as by it no title to the lands is conveyed, *Muhammed Hashan v. Emperor*, 139 I.C. 154.

Words to be used.—It is not necessary to have a receipt given in any specific terms, it is sufficient if it purports to be a discharge, and is intended to operate as such. Therefore where the word “settled” was written upon a bill presented for payment it was held to

require a stamp as a receipt. *Spawforth Q. T. v. Alexander*, 2 Esp. 621; see also *R. v. Boardman*, 2 Moody and Robinson 147.

The words "*is waste sanadan tahrir Kar dete hai*" are found in every receipt and do not make an instrument a conveyance, *Mahammad Hashan v. Emperor*, 139 I.C. 154.

A receipt for money, stating that it is to be repaid on a certain event *viz.*, in case the liability for executants as bail for H. has ceased is an agreement and is to be stamped as such, *Batson v. Trance*, (1862) 2 F. and F. 320.

EXEMPTIONS.

(a) **Endorsement.**—Cl. (a) of the exemptions is similar in language to cl. 11 of the Exemptions from duty as a receipt under the English Stamp Act, 1891. Therefore an endorsement written upon an instrument duly stamped, is exempt from duty. The English cases will therefore apply.

A receipt endorsed upon a duly stamped scrip certificate acknowledging payment of an instalment due, is exempted from duty *London and Westminster Bank v. Commissioners of Inland Revenue*, (1900) 1 Q.B. 166; 81 L.T. 630; 48 W.R. 195; 62 L.J.Q.B. 102

An endorsement on a mortgage, acknowledging the receipt of the sum mentioned in the endorsement and secured by the mortgage bond is exempt from duty under Sch. II Art. 15 (a) (Art. 53 Exemption) of the Stamp Act I of 1879, it being a receipt within the term of the exemption, *Reference under Stamp Act*, s. 46, 10 Mad. 64.

(b) **Payment without consideration.**—*Barrister's fees.*—Fees received by a barrister for professional services are honoraria, and he can neither sue for the recovery nor can he be sued for their return. *C. Ross Alston v. Pitambar Das*, 25 All. 509; (1903) 23 All. W.N. 104; *Kristna Rav. v. H. F. Multukistna*, 4 Mad. H.C.R. 244; *Smith v. Guneshee Lal*, 1871 N.W.P.H.C.R. 83; *Achamparambath Cheria Kunhanum v. Ganty*, 3 Mad. 138. A receipt for barrister's fees is exempt from stamp duty, *Reference under Stamp Act*, s. 46, 9 Mad. 140 F.B. Receipts granted by advocates in exercise of their profession is exempt from duty, *Shircore v. Queen Empress*, 15 P.R. 1897 F.B. Cr.

Fees paid to counsel being, in the eye of law, a gratuity or honorarium, no stamp duty is leviable on receipt granted for such payments. *Stamp reference from the Board of Revenue*, 16 All. 132; (1894) All. W.N. 12. But see contra in *Reference under s. 46 of the Indian Stamp Act*, 1879, 85 P.R. 1895 F.B. where it was held that payment of fees to counsel for services rendered is for consideration; hence the receipt is to be stamped. See also *Local Government v.* 10 C.P.L.R.Cr. 11. See also *Pennel v. Harrison*, 4 L.B.R. 55 F.B.

Receipts granted by Presidents of District Boards for amount transferred from the Provincial to Local Funds by adjustments in the Collector's books of account are exempt from stamp duty as being receipt for payment of money without consideration within the meaning of Act 53 (b). *In re the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, Madras*, 9 M.L.T. 356 : 1911 M.W.N. 293 : 9 I.C. 342 F.B.

Where the owner receives back his money.—Where an owner, whose money was stolen, but subsequently recovered, received back his money the receipt executed by him in favour of Government need not bear any stamp duty as the payment by Government was without consideration, *Kanhailal v. Emperor*, 46 All. 354 : 22 All. L.J. 288 : 25 Cr.L.J. 1008 : 81 I.C. 720 : 1924 A.I.R. 578 (All.). See also Allahabad Circular No. 4 dated 3rd April, 1883. But see *Calcutta High Court Circular No. 22, dated the 13th September, 1864* set out in 4 *W.R. Civ. Cir.*, where it was laid down that when a person who had deposited money in a Court and receives back the unexpended deposit, the receipt granted by such person in favour of the officer of the court should bear a stamp of one anna. [But this was under the Act of 1862 which did not contain any provision similar to (b)].

Between co-servants.—There is no relationship of a debtor or creditor, between an assistant and the cashier of a firm or as between the assistant and his employer; therefore a receipt by an assistant who pays out money to the cashier of having received money is not a receipt and does not require a stamp. *In re Burn & Co.*, 37 Cal. 634 (640, 641) : 14 C.W.N. 833 : 6 I.C. 778.

(c).—This exemption refers to rents payable by cultivators on lands assessed to revenue or inam lands.

(g).—*Receipt for rent.*—A receipt for payment out of court of money due under decree for agricultural rent is not exempt as the debt of rent has merged in the decree for rent, *Emperor v. Dungar Singh*, 31 All. 36 : 5 All. L.J. 747 : (1908) All. W.N. 272 : 1 Ind. Cas. 568.

(h).—As to the liability of a Bank to stamp receipts granted by it. See *In the matter of Act. XVIII of 1869 and of the uncovenanted Service Bank*, 4 Cal. 829 : 3 C.L.R. 507. The exemption given to bankers by exemption (h) under this Article refers only to receipts given for money or securities for money deposited in the hands of any banker to be accounted for, and does not apply to the case of receipts given in acknowledgment of loans. All receipts other than those specifically exempted by this article should be stamped—*Madras Boards Proceedings, Mis. No. 88 dated 6th March, 1927*.

Remissions of duty.—The Governor General in Council has been pleased to remit the duty chargeable under the said Act on receipt given by the officers of the Indian Postal and Telegraph Department in respect of sums paid to them by the Government as advances for the purchase of railway or steamer tickets (*vide* Gazette of India, Part I, Page 1079, dated October 9, 1926).

The Governor General in Council is pleased to remit with effect from 1st July 1927 the duty with which receipts endorsed on cheques or on bills of exchange payable on demand are chargeable under Article 53 of Schedule I to the Indian Stamp Act, 1899 (II of 1899)—(*Published in the G. of India, Part I, Page 43, Jan'y. 21, 1928.*)

The Governor-General in Council has been pleased to remit the stamp duty chargeable under the Stamp Act on receipts (not being receipts exempted under clause (d) or clause (f) of Article 53 in Schedule I to the said Act, (a) for pay or allowances by persons below the rank of a non-commissioned officer, who are enrolled under the Indian Army Act, 1911, when serving in such capacity, (b) for pensions and allowances, by persons receiving such pensions or allowance in respect of their service in the capacity specified in clause (d) and not serving the Government in any other capacity—*Published in G. of India, Part I, Page 808 dated, July 30, 1927.*

Description of Instrument.	Proper Stamp-duty.
54. Re-conveyance of Mortgaged Property—	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;	The same duty as a Conveyance (No. 23) [<i>Bond (No. 15) —in Bombay</i>] for the amount of such consideration as set forth in the Reconveyance.
(b) in any other case	Ten rupees [<i>Rupees fifteen— in Bengal, Madras, U. P. and Punjab</i>].
[<i>In Burma—</i>	
54. Reconveyance of mortgaged property or instrument of extinguishment of a mortgage.	Subject to a maximum of two rupees eight annas the same duty as a Conveyance (No. 23) for the amount of the consideration for the mortgage].

NOTES.

See Art. 53, Sch. I of Act I of 1879, and Art. 27, Sch. II of Act XVIII of 1869.

Stamp to be used.—Impressed label—Rules 6 and 10 (ii).

Reconveyance.—This Article can apply only to those cases where an instrument reconveying property is necessary, or if optional, such an instrument is executed.

When the original deed was on the face of it an absolute sale, and the effect of it was merely controlled by the *ekrar*, the return of the

latter extinguishes the equity of redemption. A separate deed requiring a separate stamp was therefore, unnecessary, *Raj Coomarr Singh and Ors. v. Ram Suhoje Roy and Ors.*, 11 W.R. 151 (152).

Description of Instrument.	Proper Stamp-duty.
55. Release , that is to say, any instrument not being such a release as is provided for by section (23A) whereby a person renounces a claim upon another person or against any specified property—	
(a) if the amount or value of the claim does not exceed Rs. 1,000 ;	The same duty as a Bond (No 15) [<i>Bottomry Bond</i> (No. 16)—in <i>Madras and Punjab</i>] for such amount or value as set forth in the Release.
(b) in any other case	Five rupees [<i>raised Rs. 7-8— in Bengal, Madras, Punjab, U. P. and Burma, and to Rs. 10—in Bombay.</i>]

NOTES.

See Art. 54, Sch. I of Act I of 1879, and s. 3 (30) and Art. 30, Sch. II of Act XVIII of 1869.

Amendment.—The words, figures and letters “not being such a release as is provided for by section (23A)” were inserted by s. 8 (7) of the Indian Stamp (Amendment) Act, 1904 (15 of 1904).

Stamp to be used.—Impressed labels—Rules 6. and 10 (ii).

Release, nature of.—Release as contemplated in this Article would include :—

- (1) A renunciation of a claim ;
- (2) Against another person or against specified property ;
- (3) Not being cases included in s. 23-A of this Act.

Where the principal entered in the account book of the agent that so much is due to him and that he releases the agent from claims to account to him and acknowledged the correctness of the account, *held* that the 2nd part is a release and should be stamped as such, *Ramaswami Aiyar v. Ganamani Naehier*, 31 M.L.J. 851 : 1917 M.W.N. 121 : 87 I.C. 984.

Renouncing claim to avoid litigation.—Where two persons, who are not co-sharers in order to avoid litigation, agree to give up in favour of each other certain property, in which each claim to be a full owner, by writing, the deeds are instruments of release and should be

stamped as such. *Jiban Kuar v. Gobind Das*, 38 All. 56 : 13 All. L.J. 1109 : 31 I.C. 404 F.B.

A formal renunciation of a claim to immovable property is a release, and if the value be over Rs. 100, the deed requires registration, whether the claim is legally valid or not. The instrument is to bear a stamp duty of Rs. 5. *Atmaram v. Lala*, 6 N.L.R. 36 : 10 Ind. Cas. 733. See also *Abdul Hoosein Mulla v. Goolam Hoosein Ally*, 30 Bom. 304 : 7 Bom. L.R. 742.

Renunciation by a Benamdar.—An instrument executed by a certificated purchaser at a court auction, renouncing all his claim in favour of the true purchaser at the auction, is a deed of release within the meaning of Art 55 of the Indian Stamp Act. *Reference under s. 57 of Act II of 1899*, 24 All. 372 : (1902) 22 All. W.N. 71 F.B.

Agreement to abide by the decision of the punch.—An agreement to abide by the decision of *punch* and to claim nothing more, is a deed of release, *Nemchand v. Lalchand*, 1882 P.J. 248.

Release or conveyance.—If a certain sum of money is received in exchange of relinquishment then the instrument is a conveyance and is to be stamped as such, *In re Hiralal Nawalram*, 32 Bom. 509 : 16 Bom. L.R. 730.

Where the deed is for consideration.—But if the executant execute the instrument in consideration of a sum of money the instrument is a conveyance and not a deed of release, *In re Hiralal Nawalram*, 32 Bom. 509 : 10 Bom. L.R. 730; *Reference under Stamp Act, s. 46*, 7 Mad. 350.

Partition-release.—If an instrument of partition is wrongly described as a deed of release the instrument is to be stamped as a deed of partition, *i.e.*, where the claim was between co-owners of the property, *Reference under Stamp Act, s. 46*, 12 Mad. 198. See also *Reference under Stamp Act, s. 46*, 18 Mad. 233 which was a case of a son relinquishing his claim to a share in the ancestral family property in consideration of payment of his debts and some lands to be enjoyed by him for life. It was held that the instrument is a deed of release, see also *Eknath S. Gownde v Jagannath Gownde*, 9 Bom. 417 where the deed was held to be a deed of release; *Jiban Kunwar v. Gobind Das*, 38 All. 56 (58) : 13 All. L.J. 1109 : 31 I. C. 404 F. B. where each claimant claimed to be full owner of the property and each of the claimants released a portion of the property in favour of the other to avoid litigation.

Release on receiving compensation—A Colliery Company on receiving compensation under the (English) Railways Act, 1845, executes an instrument by which they acknowledge the receipt of the amount of compensation in satisfaction of all their claims in respect of the coal such an instrument is a deed of release as the right was not a right not before in existences, within the meaning of s. 60 of the (English) Stamp Act, 1891, at the date of the instrument, *Great Northern Railway Company v. Commissioners of Inland Revenue*, (1901) 1 K.B. 416 C.A.

Release by reversioner.—An instrument executed by the reversioner whereby he renounces all his claim to the property, is a deed of release and should be stamped as such, *Krishnaji Narain v. Balakrishna Venkatesh*, 33 Bom. 657 : 11 Bom. L.R. 735 : 8 Ind. Cas., 772.

Among members of the family.—An instrument whereby two brothers relinquished their right in certain properties in favour of another brother of them provided that that brother would discharge certain debts and pay them an annuity, is a deed of release inasmuch as the provisions in the instrument in favour of the executants are mere recitals of consideration of the release and created no interest in their favour so as to necessitate additional stamp, *Eknath Gownde v. Jagannath S. Gownde*, 9 Bom. 417 : 1885 P.J. 47; *Reference under Stamp Act, s. 46*, 18 Mad. 233 F.B., which was a case of release by a son to father.

Deed by a Hindu widow.—*Release or relinquishment.*—The question whether a relinquishment by a Hindu widow in favour of the next reversioner by a deed is a release or relinquishment of her interest has been discussed in *Gangadayaal Misir v. Sm. Chhakira Bhanu*, 46 C.L.J. 149 : 105 I.C. 22 : 1927 A.I.R. 806 (Cal.). In *Rangaswami v. Nuchiappa*, 46 I.A. 72 : 42 Mad. 523 : 17 A.L.J. 536 : 21 Bom. L.R. 610 : 29 C.L.J. 539 : 23 C.W.N. 777 : 10 L.W. 105 : 36 M.L.J. 493 : 1919 M.W.N. 264 : 50 I.C. 498 and in *Sureshwar v. Maheshwari*, 47 I.A. 233 : 48 Cal. 100 : 18 M.L.J. 1069 : 25 C.W.N. 194 : 41 C.L.J. 433 : 12 L.W. 461 : 39 M.L.J. 161 : 1920 M.W.N. 472 : 57 I.C. 325, the Judicial Committee of the Privy Council held the arrangement by which the widow conveyed her life interest to the next reversioner to be a *surrender* by the widow of her interest.

A release by a widow renouncing her claim to maintenance in favour of her brother-in-law whereby she obtained full rights to her jewels etc., worth Rs. 600 and to Rs. 200 in cash, is to be stamped on Rs. 800. (*Madras Boards' Proceedings No. 691-R. Mis. 1st May 1908*).

Conveyance of property.—Where three executors named in a will purported to convey to one of them a house which the latter was entitled to under the will, for Rs. 10, held that the deed is not a deed of release but is a conveyance as the other executors did not renounce any claim against the other executor nor against the property. *Reference under Stamp Act, s. 46*, 7 Mad. 350.

By a mortgagee to mortgagor.—Where the mortgagee gave up his right under the mortgage or as regards one security in exchange of another security, by a letter, held that the instrument is a deed of release and should be stamped as such. *Safilar Ali Khan v. Lachman Das*, 2 All. 554.

Not releases.—A written order upon tenant to pay rent to a third person in whose favour the landlord had executed a deed of release is not a document which requires a stamp. *Bukshee Kunnee Lal v. Thakoornath*, 25 W.R. 80.

Where a testator directed that a debt due to him by an attesting witness of his will should not be claimed, demanded or enforced, but that his wish was that the sum should be specially devoted to the education of the children of such attesting witness, *held* that there is no release of debt. *The Administrator General of Madras v. Taxer Stephen Lozur*, 4 Mad. 244.

Penalty—Calculation of.—An instrument of release chargeable with four annas duty was executed on paper bearing one anna stamp duty (adhesive receipt stamp under Act I of 1879), *held* that in calculating the duty and penalty payable the one anna stamp ought not to be taken into consideration, *Reference under Stamp Act*, s. 46, 15 Mad. 259 F.B.

Description of Instrument.	Proper Stamp-duty.
56. Respondentia Bond , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) [<i>Bottomry Bond</i> (No. 16) —in Bengal, Madras & Punjab] for the amount of the loan secured.
REVOCATION OF ANY TRUST OR SETTLEMENT —See SETTLEMENT (No. 58); TRUST (No. 64).	

NOTES.

See Art. 55, Sch. I of Act I of 1879, and s. 3 (31) and Art. 7, Sch. I of Act XVIII of 1869.

Stamp to be used.—Impressed label—Rule 3.

Respondentia bond.—Respondentia is the borrowing of money upon goods and merchandise which are to be sold or exchanged in the course of voyage. The borrower upon this contract is liable, unless the goods be lost. It differs not much from bottomry, except that in a loan of money upon bottomry the lender runs no risk though the goods be lost, and on respondentia the lender must be paid his principal and interest, although the ship perish, provided the goods are safe—*Tomlins*. The master of a ship may, under certain circumstances, as agent of necessity, hypothecate the cargo in the hold of a ship, such hypothecation is called a *respondentia*. Such hypothecation is necessarily without possession to the lender. See the incidents of a Jokhmi Hundi in *Jadowji Gopal & Ors. v. Jetha Shamji & Another*, 4 Bom. 333 (340, 341).

Description of Instrument.	Proper Stamp-duty.
<p>57. Security-bond or Mortgage-deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—</p> <p>(a) when the amount secured does not exceed Rs. 1,000 ;</p> <p>(b) in any other case: </p>	<p>The same duty as a Bond (No. 15) [<i>Bottomry Bond</i> (No. 16)—in <i>Madras</i>] for the amount secured.</p> <p>Five Rupees [<i>raised to Rs. 7-8 annas in—Bengal, Madras, Punjab, Burma and U. P. and to Rs. 10—in Bombay.</i>]</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Bond or other instrument, when executed—</p> <p>(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;</p> <p>(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;</p> <p>(c) under No. 3A of the rules made by the Governor of Bombay in Council under section 70 of the Bombay Irrigation Act, 1879 ;</p> <p>(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;</p> <p>(e) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	

NOTES.

See Art. 14, Sch. I of Act I of 1879, and Art. 12, Sch. I of Act XVIII of 1869.

Security bonds to be stamped under this Article must be one of those specified in the Article, otherwise it would have to be stamped either under Art. 15, Sch. I of the Stamp Act or under the Court Fees Act.

The Bengal Irrigation Act, 1876, is Beng. Act IV of 1876. The Bombay Irrigation Act, 1879, is Bom. Act VII of 1879. The Land Improvement Loans Act, 1883, is Act XIX of 1883. The Agriculturists' Loans Act, 1884, is Act XII of 1884.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Security-bond.—Security Bonds or mortgage deeds executed by way of security coming under this Article are those that are executed

- (1) For the due execution of an office,
- (2) or to account for money or other property received by virtue of such office,
- (3) or by a surety to secure the due performance of a contract.

• • **Bond for service.**—Where a cashier executes a mortgage deed as security for due performance of his duties and as security for the repayment of any sum he may be found liable for as a cashier to an extent not exceeding Rs. 6,000, the stamp duty payable as to this part was also a fixed duty under Art. 57 of Sch. I of the Stamp Act. *McDowell & Co. v. Kughava Chetty*, 27 Mad. 71 (74).

A combination of Nokarnama (agreement of service) and a security bond for due discharge of service is to be stamped both under Art. 5 (e) and Art. 57 (b) of the Indian Stamp Act. *Nilkanth v. Kesheorao*, 78 I.C. 956 : 1924 A.I.R. 408 (2) Nag.

Where a bond was executed in favour of a bank but the surety of the borrower did not sign, and a prosecution was instituted on the allegation that an attempt to defraud the Government of the duty has been made, *held* there was no attempt to evade duty and had the surety also signed the bond no additional stamp would have been required, *Nripati Chandra Das v. Emperor*, 21 C.W.N. 758 (761) : 40 I.C. 725.

Surety.—A mortgage deed executed by a mortgagor and his surety whereby they are jointly and severally liable for the mortgage money and stipulating that the mortgagee at his option can recover from either of them, was *held* to be sufficiently stamped if the bond was stamped as a mortgage bond, *In re stamp duty leviable on a certain deed execute by M. Ghulam Haidar and Abdul Latiff in favour of the Punjab Banking Co. Ltd., Peshwar*, 15 P.R. 1910 : 14 P.L.R. 1910 : 16 P.W.R. 1910 : 5 I.C. 872.

Security bonds in favour of Courts.—Where the appellant was ordered to find security for costs of the respondents and in the event of her failure her appeal was liable to be dismissed and she in compliance with that order of the court filed a security bond stamped with a court fee of annas 8, *held*, that as the bond is given under orders of court as security by one party for costs awarded to the other party the

bond is liable to two duties, one *an ad valorem* stamp under the Stamp Act, Art. 13, Sch. I of Act I of 1879, and another of 8 annas under Court Fees Act, Art. 6, Sch. II. *Kulwanta v. Mahabir*, 11 All. 16 : (1888) 18 All. W.N. 281 F.B., but in *Dwarkanath v. Sarlaja Kantha*, 21 C.W.N. 1150 it was held that "security bonds executed in compliance with conditional order of court for stay of execution need one stamp under Court Fees Act" It must be remembered that by Act VI of 1889, s. 18 (4) the words "or by the Court Fees Act, 1870" were added to Art. 15 of this Act, which modifies the decision in 11 All. 16 and the cases that follow that decision. See also s. 77 of this Act. •

It should be noted that both under Art. 40 as well as under this Article the words 'mortgage deed' occur. Art. 40 is solely applicable to mortgages and this Article to 'security bonds or mortgage deeds'. The stamps prescribed are different in the Articles. If Article 40 be construed to cover the cases of security bonds where property is hypothecated then this Article is redundant. Article 40 provides for duties on instruments, amongst others, which are not security bonds. Therefore it appears that the words 'mortgage deed' in this Article imply that the Article includes such security bonds as would fall within the definition of a mortgage deed. [Sec. 2 (17)]. See Forms of these bonds in Appendix G, Forms 3 and 4 in the Code of Civil Procedure, 1908, and also s. 145 of the said code. It should be remembered that Art. 40 of this Act exempts security bonds from its operation, the words used being 'not being an Agreement'.

In *Jayma Bewa v. Easin Sarkar*, 53 Cal. 515 : 30 C.W.N. 609 : 43 C.L.J. 493 : 95 I.C. 483 : 1926 A.I.R. 509 (Cal.) these contracts were held to be contracts of guarantee under s. 126 of the Contract Act and to be stamped as such. It should also be remembered that the Court Fees Act does not apply to the High Courts of Calcutta, Bombay and Madras in their original side. Therefore Schedule II Art. 6 of the Court Fees Act cannot apply to the security bonds executed in their original side.

Calcutta High Court.—"Security bonds executed in pursuance of an order of the Court under Order 32, rule 6 (2) or any other rule or section of the Civil Procedure Code must bear a Court Fees Stamp as required by Art. 6 of Schedule II of the Court Fees Act, 1870 ; and they will also be chargeable under Stamp Act if they are of the kind described in Art. 40 or Art. 57, but they will not be chargeable under the Stamp Act if they fall under the residuary Art. 15." *Reference*, 42 C.L.J. 5 : 89 I.C. 289 : 29 C.W.N. 851 : 53 Cal. 101 : 1925 A.I.R. 906 (Cal.) F.B.

See also Art. 6, Schedule II of the Court Fees Act. See also *Sarbo Mussulmani v. Safar Mandal*, 49 Cal. 997 : 68 Ind. Cas. 730 : (1923) All. I. R. 269 (Cal.) for the production of live stock.

A joint petition was filed in the course of execution proceeding whereby E. agreed to stand as surety for the decretal amount in case the judgment-debtor fails to fulfil his obligation under the decree and if the surety failed to pay then the decreeholder will be able to execute the decree against E. The petition to court bore a stamp of 8 annas,

held that the contract in the petition amounted to a contract of guarantee and the contract must be stamped not only as a petition but also with a further stamp appropriate to a contract of guarantee as provided by the Stamp Act, *Jayma Bewa v. Easin Sarkar*, 53 Cal. 515: 30 C.W.N. 609; 43 C.L.J. 493: 95 I.C. 483: 1926 A.I.R. 509 (Cal.).

Lahore High Court.—A security bond written on plain paper bearing an eight anna court-fee stamp and not engrossed on an impressed non-judicial stamp, is not properly stamped, *Gurandilla Mal v. Firm of Gurdasmal Ramchand*, 91 I.C. 772: 1925 A.I.R. 552 (Lahore): 7 L.L.J. 343.

A security bond for the stay of execution of a decree stipulating that the surety will be personally liable is to bear court fee stamp under Art. 6 of Sch. II of the Court Fees Act and not under the Indian Stamp Act as it falls under the residuary Art. 15 of the Indian Stamp Act, *Mahomed Ewaz v. Haji Nauch Mean*, 11 L.L.J. 40: 30 Panj. L.R. 131: 117 I.C. 226: 1929 A.I.R. 205 (Lah.).

Lucknow Chief Court.—B. obtained a decree in a court of law. The court allowed him to take possession of the properties on his furnishing security. Certain persons executed a mortgage deed in favour of the Court to compensate the other side to the extent of a lakh and a half rupees as security. On a question as to stamp payable and on a reference by the Revenue Authorities, the Oudh Chief Court held that the transaction between B and the Court was a contract. B contracted that if he were allowed to take possession of the property in dispute he would restore the property in the event of his failure in appeal. This deed was a mortgage deed executed by the executants to secure due performance of the contract by B. As such the executants incurred liability to pay stamp duty under Art. 57 but Article 57 makes a special concession in favour, inter alia of mortgage deeds executed by surety to secure due performance of a contract. *Lala Harihar Partab Singh v. Bisheshar Baksh Singh*, 3 Lucknow 298: 107 I.C. 553: 1928 A.I.R. 143 (Oudh): 5 O.W.N. 15 F.B. This case was followed and the law as enunciated in this case was reaffirmed in *Junior Secretary of the Board of Revenue U. P. v. Lalla Baksh Singh*, 6 Luck. 601: 8 O.W.N. 116: 14 O.L.J. 224: 132 I.C. 831: 1931 A.I.R. 99 (oudh.).

Allahabad High Court.—The case in 3 Lucknow 298 *supra* was dissented from in *In re Stamp Reference (Janghe Lal)*, 52 All. 844: 1931 All. L.J. 41: I.R. 1931 (All.) 419: 131 I.C. 675: 1931 A.I.R. 189 (All.) F.B. where a security bond executed in compliance with an order under Ord. 41, rule 5 of the Code of Civil Procedure allowing execution of the decree to be stayed on the judgment debtor furnishing security was held to require a stamp under Art. 40 of the Indian Stamp Act as the security bond was really a mortgage deed as defined in the Indian Stamp Act. The security bond was executed in favour of the Subordinate Judge presiding over the executing Court. The Allahabad High Court held that the contract mentioned in Art. 57 obviously cannot mean the contract of the surety himself, but must refer to the contract of some other person and as neither the court nor the judgment-debtor entered into a contract nor did they purport to enter into a contract,

therefore, the instrument is not executed to secure the due performance of a contract hence Art. 57 is inapplicable.

The judgment of the Allahabad High Court proceeds on the footing that there cannot be a contract between the judgment-debtor and the court. This is so according to the decisions of the Judicial Committee in *Raj Raghubir v. Jai Indra Bahadur Singh*, 46 I.A. 228 : 42 All. 158 : 18 A.L.J. 263 : 22 Bom. L.R. 521 : 38 M.L.J. 302 : 55 I.C. 550, where the practice of Calcutta High Court in obtaining such deeds in the name of an officer of the court was approved of. Therefore in the case of the Calcutta High Court it would be a contract. Moreover this case ignores that Art. 40 exempts mortgage deeds under Art. 57 from its operation which aspect was considered by the Lucknow Court. Moreover if the court is not a person then it is doubtful if the security in favour of a court would be a mortgage according to the definition given in this Act in s. 2 (17). See also Fisher on mortgages where a mortgage is stated to be a contract between parties to the mortgage.

Madras High Court.—Security bonds executed in favour of a Court are mortgage-bonds and must be stamped under Article 40 of the Stamp Act and the Court Fees Act, as the bond fell within the definition of a mortgage bond as given in the Stamp Act. *Amirthamal v. Ramlinga*, 43 Mad. 363 : 57 I.C. 184 : 38 M.L.J. 503 : 1920 M.W.N. 245.

A security bond taken by a village court under s. 53 of the Madras Village Courts Acts for property received which the executant undertook to restore or pay Rs. 40, the question as to stamp having arisen, it was held that under Art. 46 of Sch. I-A of the Madras Stamp Act as amended in that Province (Art. 57 of Act II of 1899), the instrument should bear stamp duty as on a Pottomry bond for the amount secured as the Code of Civil Procedure does not apply to village courts at all and therefore the bond does not fall under Art. 6, Sch. II of the Court Fees Act. *Cheedella Chenchayya v. Amureddi Pichireddy*, 52 M.L.J. 155 : 1927 M.W.N. 281 : 25 L.W. 246 : 100 I.C. 545 : 1927 A.I.R. 377 (Madras).

A security bond for the production of attached live stock made under the Code of Civil Procedure is a bond and is to be stamped under Art. 6, Sch. II of the Court Fees Act, *Reference under the Court Fees Act*, 37 Mad. 17 (23) : 24 M.L.J. 637 : 20 I.C. 775.

Security by a contractor for due performance of a contract.—Where G. P. Notes were lodged in the District Treasury by a contractor as security for the due and faithful performance of a contract entered into by him, it was held that the deed is an instrument of mortgage, and is to be stamped as such, *Reference under the Stamp Act*, s. 46, 11 Mad. 39.

See *contra*, *Reference under the Stamp Act*. s. 46, 7 Mad. 209.

Executed by a surety for due performance of a contract.—Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with duty under Article V, Schedule I of Act XVIII of 1869, *Reference from the Financial Commissioner of Oudh*, 13 W.R. 353.

P. C. Appeals.—In the case of *Soorjharce Kaomear v. Ramessur Pandey*, 5 W.R. Misc. 47 (decided in 1866) it was decided that security bonds for costs in appeal to His Majesty in Council falls within Art. 12, Schedule A of Act X of 1862 i.e., as a bond or other obligation for payment of a special sum of money, but now the case would fall under this Article, See also *Mohomed Raffce v. Secretary of State for India in Council*, 69 P.R. 1869.

Assignment of security bond.—An assignment of security bond, executed under Or. 32, Rule 6 by which immovable property was hypothecated to secure proper disposal of money due to minors and deposited in court in favour of the minors to be given to them on their obtaining majority need not be on a stamped and registered deed of sale but may be made by an order of court, *Ram Suran Das v. Yudhistir Prasad and Another*, 53 All. 786 : 1931 A.L.J. 503 : I.R. 1931 (All.) 760 : 133 I.C. 904 : 1931 A.I.R. 389 (All.) F.B. See also *Sarat Chandra Roy Chowdhury v. Rajoni Mohan Roy and Others*, 12 C.W.N. 481.

- • **Exemption (e).**—Under the old law (*Reference under Stamp Act*, 3 All. 788 : 1881 All. W.N. 74) it was doubted whether a security bond executed by the sureties of an officer of Government to secure due execution of an office, is exempt from stamp duty under Art. 12 (b) Schedule II of Act I of 1879, but the question is now settled that it is now exempt by insertion of the words "or other property" in the Act. Stuart C. J. considered the words "or other property" which appeared in the security bond. A security bond executed by a third party to the abkari department is exempt from stamp duty, *Ramaswami Chetti and Ors. v. Pappa Reddi*, 1 Mad. H.C.R. 190.

Description of Instrument.	Proper Stamp-duty.
58. Settlement— A.—INSTRUMENT OF (including a deed of dower)	<p>The same duty as a Bond (No. 15) [<i>Bottomry Bond</i> (No. 16) —in Bengal, Madras and Punjab] for a sum equal to the amount or value of the property [settled as—added in Bengal, Bombay, Madras, U. P., Punjab and Burma] set forth in such settlement :</p> <p>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas [raised to twelve annas—in Bengal, Madras and Punjab and to one rupee—in Bombay].</p>

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Deed of dower executed on the occasion of a marriage between Muhammadans.</p> <p>(b) Hludassa, that is to say, any settlement of immovable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs. 10 has been paid.</p>	
<p>B.—REVOCATION OF </p>	<p>The same duty as a Bond (No. 15) [<i>Bottomry Bond</i> (No. 16)—in Bengal, Madras and Punjab] and <i>Conveyance</i> (No. 23)—in Bombay] for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees [<i>not exceeding fifteen rupees</i>—in Bengal, Madras, Punjab and U. P.]</p>

See also TRUST (No. 64).

NOTES.

See Art. 57, Schedule I of Act I of 1879 and Art. 14, Schedule I of Act XVIII of 1869, See s. 105 of the Stamp Act, 1891 (51 and 55 vict. C. 39).

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

Settlement.—As to what is a settlement, see s. 2 (24) *supra*, and the cases noted hereunder. "A deed of settlement remains a deed of settlement within the meaning of Art. 58 (A) although it records disposition of property not reduced to writing anterior to the passing of Act XV of 1904," *In re Mansukhram*, 7 Bom. L.R. 931. But a settlement under power of appointment by will is governed by Art. 7 and not by this Art, *In re Abdullu Haji Dawood Bowla Orphanage*, 35 Bom. 444 : 13 Bom. L.R. 646.

Contingent deeds.—Where the deeds of settlement are contingent on the happening of future events and were really one transaction, the 2nd deed requires a stamp of one rupee only, *Reference under Stamp Act (In the matter of Sambhu Dayal)*, 37 All. 150 : 13 All. L.J. 96 : 27 I.C. 731.

Dower.—Although deed of dower executed in 1862 was exempt from stamp duty under notification No. 835 dated 18th February, 1886, still if by the deed, property is hypotheated as security for payment of dower amount, the deed is to be stamped as a deed of mortgage, *Abbasi Begum v. Tufan Ali Khan*, (1900) 20 All. W.N. 13.

Masaharapatra—In *Saroj Bandhu Bhattachary v. Sm. Inanada Sundari Deby*, 55 C.L.J. 377 : 36 C.W.N. 555 the Calcutta High Court construed a *Masaharapatra* to be a deed of agreement and not a deed of settlement.

Value as set forth in the deed—Stamp duty on a deed of settlement is to be assessed on the value set forth in the deed. The Madras High Court held that the words “as set forth in such settlement” apply not to the interest created by the instrument but to the value as set forth in the settlement and the law suggests that the settlor should insert the value, *Reference under Stamp Act, s. 46, 8 Mad. 453 F.B.* See also *Reference under Stamp Act, 1883 P.J. 364 (Bombay)*.

Description of Instrument.	Proper Stamp-duty.
<p>59. Share Warrants to bearer issued under the Indian Companies Act, 1882 (<i>see now Act VII of 1913</i>).</p>	<p>One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</p> <p>[In U. P.—</p> <p><i>The same duty as a Deben- ture transferable by delivery (No. 27b) for a face amount equal to the nominal amount of the shares specified in the warrant].</i></p>
<p><i>Exemptions.</i></p> <p>Share warrant when issued by a company in pursuance of the Indian Companies Act, 1882, (<i>see now Act VII of 1913</i>), section 30, to have effect only upon payment as composition for that duty, to the Collector of Stamp-revenue, of—</p> <p>(a) One and a half times per centum of the whole subscribed capital of the company, or</p> <p>(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital one and a half times per centum of the additional capital so issued.</p>	

NOTES.

This Article is new. e

Amendments.—The words “one and a half times” wherever they occur in this Article were substituted for the words “three quarters,” by s. 3 (5) of the Indian Stamp (Amendment) Act, 1910 (6 of 1910). The Indian Companies Act, 1882 is Act 6 of 1882, but the present Act is Act 7 of 1913. S. 30 of the Act of 1882 corresponds to s. 43 of the Act of 1913.

Stamps to be used.—Impressed stamp—Rule 6.

Share warrants.—This article corresponds to s. 35, sub-section 1 of Act VI of 1882 (old Indian Companies Act). Where nine share warrants were issued but was not duly stamped, *held* that the omission to stamp each is an offence under s. 35 of the Companies Act (Act VI of 1882) [now s. 62 (2) of the Stamp Act], *Queen Empress v. Moore*, 20 Cal. 676.

Description of Instrument.	Proper Stamp-duty.
SCRIP.— <i>See</i> CERTIFICATE (No. 19).	
60. Shipping order for or relating to the conveyance of goods on board of any vessel.	One anna.

NOTES.

See Art. 58, Sch. I of Act I of 1879 and Art. 6, Sch. II of Act XVIII of 1869.

Stamp to be used.—Adhesive labels—Rules 6 and 81.

Description of Instrument.	Proper Stamp-duty.
61. Surrender of Lease —	
(a) when the duty with which the lease is chargeable does not exceed five rupees [<i>Seven rupees Eight annas—in Bengal, Madras, Punjab and U. P.</i>];	The duty with which such lease is chargeable.
(b) in any other case	Five rupees [<i>raised to Rs. 7-8—Bengal, Madras, Punjab, U. P. and Burma.</i>]
<i>Exemptions.</i>	
Surrender of lease, when such lease is exempted from duty.	

NOTES.

See Art. 59, Schedule I of Act I of 1879, and Art. 20, Schedule I of Act XVIII of 1869.

Stamp to be used—Impressed stamp—Rule 6.

Surrender.—A surrender is of a nature directly the reverse of a release as the latter operates by the falling of a less estate into a greater. It is defined by Lord Coke to be yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, wherein the estate for life or years, may drop by mutual agreement between them—*Brown*.

Surrender is a yielding up of an estate for life or years to him that has the immediate estate in reversion or remainder and is either in fact or in law. Surrender in fact must be made by deed which is the ~~the~~ ^{admissible} evidence. A surrender in law is one which may be implied, and generally has reference to estates and tenancies from year to year as where a landlord receives the key or accepts possession of the tenement let, or does any act so inconsistent with the subsisting relation of landlord and tenant as to imply an intention that the landlord should be in the same situation as if an express surrender had been made. Estates and tenancies created by any writing should be surrendered by writing, and the cancelling a lease not of itself operate as a surrender—*Tomlin*.

Chargeable.—See definition s. 2 (16) *supra*.

Surrender of a lease.—See Transfer of Property Act, s. 3 (e) and s. 111 (c) and (f). A tenure-holder cannot surrender his lease without the consent of the landlord, *Juloonath Ghose v. Schoene Kilburn & Co.*, 9 Cal 671; 12 C.L.R. 343; *Balaji Silaram v. Bhikaji Sayare Prabhu*, 8 Bom. 164; *Baliaram Giri v. Vasudev*, 22 Bom. 348.

By a Razinama.—A *razinama* by a tenant in favour of the landlord to the following effect :—“Up to the present time my father and I have been cultivating the land, but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases,” followed by settlement of the land with another is a surrender of the tenancy. *Bhutia Dhondhu v. Ambo and Others*, 13 Bom. 294, but see *Shidharaj Bhojraj v. Dari*, 45 Bom. 898; 23 Bom. L.R. 272; 61 I.C. 464.

Exemption.—Under the Act of 1862 a surrender by a tenant of his interest to the landlord was exempt from duty, *Girdhar v. Hari-bhai*, 9 Bom. H.C.R. 246. A surrender by tenant of his right in the land by writing in consideration of receipt of a sum of money is not liable to stamp duty. *Board's Letter No. 1402B*, dated 13th March, 1909.

Description of Instrument.	Proper Stamp-duty.
62. Transfer (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8 ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
<i>[In U. P. in the cases of (a) & (b)—</i>	
<i>When the value of the share or the face amount of the debenture does not exceed Rs. 100 </i>	<i>Twelve annas.</i>
<i>Where it exceeds Rs. 100 but not excd. Rs. 200 </i>	<i>One rupee eight annas.</i>
<i>" Rs. 200 " Rs. 300 </i>	<i>Two rupees four annas.</i>
<i>" Rs. 300 " Rs. 400 </i>	<i>Three rupees.</i>
<i>" Rs. 400 " Rs. 500 </i>	<i>Three rupees twelve annas.</i>
<i>" Rs. 500 " Rs. 600 </i>	<i>Four rupees eight annas.</i>
<i>" Rs. 600 " Rs. 700 </i>	<i>Five rupees four annas.</i>
<i>" Rs. 700 " Rs. 800 </i>	<i>Six rupees.</i>
<i>" Rs. 800 " Rs. 900 </i>	<i>Six rupees twelve annas.</i>
<i>" Rs. 900 " Rs. 1,000 </i>	<i>Seven rupees eight annas.</i>
<i>and for every Rs. 500 or part thereof in excess of Rs. 1,000 </i>	<i>Three rupees twelve annas].</i>
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees ; [<i>seven rupees eight annas in Madras.</i>]	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(ii) in any other case 	Five rupees [<i>Seven rupees eight annas—in Bengal, Madras, Punjab, U. P., and Burma and Rs. 10—in Bombay</i>].
(d) of any property under the Administrator General's Act, 1874, section 31 (<i>See now Act III of 1913, Section 25</i>) :	Ten rupees [<i>Rs. 15—in Bengal, Madras, Punjab, U. P. and Burma.</i>]
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees [<i>Seven rupees Eight annas—in Bengal, Madras, Punjab, U. P. and Burma</i>] or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.

Description of Instrument.	Proper Stamp-duty.
<i>Exemptions.</i>	
Transfers by endorsement— (a) of a bill of exchange, cheque or promissory note ; (b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods ; (c) of a policy of insurance ; (d) of securities of the Government of India.	
<i>See also section 8.</i>	

NOTES.

See Art. 60, Sch. I of Act I of 1879 and Arts. 4 and 12 of Sch. I of Act XVIII of 1869.

Stamp to be used.—For (a)—Adhesive labels—s. 11 (c); (b) Adhesive labels—Rules 13 (6) and Rule 16 (b); (c), (d) and (e)—Impressed labels—Rule (6) and Rule 10 (ii).

Amendments.—The words “one half” in the second column corresponding to clauses (a) and (b) were substituted for the words “one-quarter” by s. 3 (6) of the Indian Stamp (Amendment) Act, 1910 (6 of 1910). For Administrator General’s Act, see now Act 3 of 1913, which repealed the former Act (II of 1874).

Transfer.—The word transfer is used as a convertible term with “alienation” “conveyance” and “assignment.” *Gopal Pandey v. Parsotam Das*, 5 All. 121.

Transfer by endorsement.—When a simple bond is transferred to another person and the transfer is effected by endorsement on the back of the original bond and not by a separate deed, the endorsement is required to be stamped and if not so stamped, the endorsement may be validated by payment of duty and penalty under s. 34 (now s. 35) of the Stamp Act of 1879. *Prohlal Lakshman Rao Nikane v. Vithu*, 17 Bom. 687 F.B.

Transfer of a mortgage.—Where one R. on behalf of himself and his minor son executed a security bond in favour of one E. C. who assigned it to Mc. & Co., the assignment comes under Art. 62 (c) of the Stamp Act and is liable to a fixed stamp. *MacDowell & Co. v. Raghava Chetty*, 27 Mad. 71 (74).

An instrument whereby a mortgage by S is transferred to a company and an agreement is entered into by the company to lend money for making improvements etc. to H. Mills up to an unascertained but an ascertainable amount and also money required for working the

Mill, is to be stamped as a transfer of mortgage and an agreement, *The Hivardhak Cotton Mills Co., Ltd. v. Sorabji Dinshaw Karaka*, 33 Bom. 426 : 11 Bom. L.R. 386 : 2 Ind. Cas. 432.

Valuation.—One V in consideration of Rs. 5,000 mortgaged land and a house to A. There were several transfers afterwards. Suit were instituted and compromised and A in consideration of Rs. 5 and the premises “assigned the mortgage in her favour to Bhikaji, held that the value of the assignment was not Rs. 5, *Nago Kanaturia v. Babaji Katari*, 8 Bom. 610.

(e) —A transfer by three executors to one of them, of property which was bequeathed to him, was conveyed by a deed purporting to be a sale deed held that as the instrument was drawn up as a conveyance the instrument is to be stamped as a conveyance. *Reference under Stamp Act, s. 46, 7 Mad. 350.*

Description of Instrument.	Proper Stamp-duty.
63. Transfer of lease by way of assignment and not by way of under-lease.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer.
<i>Exemption.</i>	
Transfer of any lease exempt from duty.	

NOTES.

See Art. 60 (b) of Act I of 1879.

Stamp to be used.—Impressed stamp—Rule 6.

Transfer of lease.—Where certain leasehold properties were assigned to a third party, held an *ad valorem* duty is payable on the actual purchase money actually mentioned in the conveyance and the rent reserved by the deed should not be taken into account, *In re Stamp Act*, 24 Bom. 257 : 2 Bom. L.R. 401.

A deed of sale by a permanent tenant who sold his land for consideration requires *ad valorem* stamp on the consideration, although there may be recitals in the deed of the amount of rent payable annually which the vendee undertakes to pay to the landlord. *In re Punam Chand Lallu Chand Doshi*, 32 Bom. L.R. 1447 F.B. : 128 I.C. 898 : 1931 A.I.R. 1 (Bom.).

Where the interest in two coffee estates held under lease was transferred by deed for the remainder of the term, held that the deed is a conveyance but as it comes under Articles 60 of Act I of 1879, (now Art. 62) it is to be stamped under that Article, *Reference under Stamp Act, s. 46, 5 Mad. 15.*

Endorsement upon a pottah transferring it, is required to be stamped, *Pitaye Ahung v. Girghee Koer*, 11 W.R. 365.

Transfer of an undertenure, endorsed upon the back of the pottah, is not admissible in evidence, unless it is stamped as though it was a separate deed, *Telai Ahom v. Gagai Gura Chawa*, 3 B.L.R. App. 30.

A transfer of a free-hold estate and of interest secured by a lease is to be stamped both as a conveyance and under this Article. Stamp to be paid on the leasehold lands, is to be calculated on each of the items of the leasehold lands, *Reference under Stamp Act*, 23 Cal. 283.

A transfer of a share in a lease forming part of a partnership assets, is to be regarded as a sale of share in partnership assets, when the transaction is in substance a sale of a share in a partnership, *In re Menglas Tea Estate*, 12 Cal. 383.

Description of Instrument.	Proper Stamp-duty.
<p>64. Trust—</p> <p>A.—DECLARATION OF—of, or concerning any property when made by any writing not being a WILL.</p> <p>B.—REVOCATION OF—of, or concerning any property when made by any instrument other than a WILL.</p>	<p>The same duty as a Bond (No. 15) [<i>Bottomry Bond (No. 16)</i>—in Bengal, Madras, and Punjab] for a sum equal to the amount or value of the property concerned, as set forth in the instrument but not exceeding fifteen rupees [not exceeding Rs. 22-8—in Bengal, Madras, Punjab and U. P.].</p> <p>The same duty as a Bond (No. 15) [<i>Bottomry Bond (No. 16)</i>—in Bengal, Madras and Punjab] for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees [not exceeding Rs. 15—in Bengal, Madras, Punjab and U. P.].</p>

See also SETTLEMENT (No. 58).

NOTES.

See Arts. 25 and 26 of Act I of 1879 and Art. 36, Sch. II of Act XVIII of 1869.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii); for B—Rule 10 (i) A.

Trust for future advances of money.—Where a plaintiff being desirous of carrying on her deceased husband's business executed a deed of trust in favour of Madras Bank in respect of machinery, plant and fixture etc. in consideration of advance of money to be made by the Bank not exceeding Rs. 450,000 for the purpose of financing the business, *held* that the document created a trust in express language in respect of machinery etc. in or upon the business premises of the firm and that the object being to create a right in respect of specified property for the purpose of securing money advanced or to be advanced, it is a mortgage bond, *The Secretary to Commissioner of Salt, Abkari etc. v. Mrs. Orr.*, 38 Mad. 646 : 21 I.C. 876 : 25 M.L.J. 613 : 14 M.L.T. 499.

Future profits.—An agreement between certain persons to transfer future surplus profits of their respective trades to a trustee in order that the trustee should hold the fund so created on certain trusts specified in the agreement, *held* that the agreement was liable to stamp duty for a declaration of trust under the Article and as an agreement *Reference under Stamp Act, s. 46*, 11 Mad. 216.

Not a declaration of trust.—Where, under a deed of gift, the donee is to maintain the donor from the proceeds of the lands, the subject of gift, *held* that the instrument is a deed of gift and not a declaration of trust, *Reference from the Board of Revenue*, 12 Mad. 89.

Description of Instrument.	Proper Stamp-duty.
VALUATION. <i>See</i> APPRAISEMENT (No. 8)	
VAKIL <i>See</i> ENTRY AS A VAKIL (No. 30).	
65. Warrant for Goods , that is to say, any instrument evidencing the title of any person therein named or his assigns or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	Four annas [<i>Six annas—in Bengal, Madras U. P. and Punjab and eight annas—in Bombay and Burma.</i>]

NOTES.

See Art. 61 of Sch. I of Act I of 1879 and s. 3 (13) and Art. 10, Sch. II of Act XVIII of 1869.

A warrant for goods is issued by the bailee of goods.

Stamp to be used.—Impressed stamp—Rules 6 and 10 (ii).

ACT NO. XIII OF 1924.

(Received the assent of the Governor-General on the
13th June, 1924.)

*An Act to provide for the modification of certain provisions
of the Indian Stamp Act, 1899, in their application
to certain promissory notes and other instruments.*

WHEREAS it is expedient to provide for the modification of certain provisions of the Indian Stamp Act, 1899, in their application to certain promissory notes and other instruments; It is hereby enacted as follows :—

1. (1) This Act may be called the
Short title and extent. Indian (Specified Instruments) Stamp Act,
1924.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. In this Act,—
Definitions.

(a) "instruments to which this Act
applies" means—

(i) any instrument mentioned in Articles No. 19, No. 36, No. 37 or No. 52 in Schedule I to the Indian Stamp Act, 1899, or

(ii) any promissory note payable on demand for an amount exceeding two hundred and fifty rupees—

which has been executed in British India at any time after the 30th day of September, 1923, and before the 1st day of April, 1924, and which has been stamped in such a manner that it would have been duly stamped for the purposes of the Indian Stamp Act, 1899, if the Indian Stamp (Amendment) Act, 1923, had not been passed; and

(b) "section" means a section of the Indian Stamp Act, 1899.

3. (1) No exception or restriction in respect of promissory notes contained in clause (a) of the proviso to section 35 or in sub-section (1) of section 40 or in section 41 shall be deemed to apply in respect of any promissory note which is an instrument to which this Act applies.

(2) For the purpose of the application of clause (a) of the proviso to section 35 and of sub-section (1) of section 40 to instruments to which this Act applies, nothing therein contained shall be deemed to require or authorise the imposition of any penalty in respect of any such instrument.

(3) Every instrument to which this Act applies shall be deemed to have been duly stamped for the purpose of section 62.

(4) Where, before the commencement of this Act, any sum has been recovered in respect of any instrument to which this Act applies, by way of fee under sub-section (1) of section 32, or by way of penalty under the proviso to section 30 or under sub-section (1) of section 49, or by way of fine under section 62, the person from whom such sum has been recovered shall be entitled to a refund thereof.

ACT NO. XI OF 1926.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor-General on the 2nd March, 1926.)

An Act to provide for the validation of certain promissory notes.

WHEREAS it is expedient to provide for the validation of certain promissory notes stamped with postage stamps of the denomination of two or four annas; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Promissory Notes (Stamp) Act, 1926.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. A promissory note payable on demand for an amount exceeding two hundred and fifty rupees, executed after the 30th day of September, 1925, and before the 5th day of January, 1926, and stamped with an adhesive stamp or adhesive stamps inscribed for postage and of the value required by the law in force at the time the promissory note was executed, shall not, by reason only of the fact that the stamp or the stamps or any of them is or are of a description other than that required by such law, be deemed for any of the purposes of the Indian Stamp Act, 1899, or of the rules made thereunder, not to have been duly stamped.

Scope.—Promissory notes (Stamp) Act XI of 1926 has no reference to a case where the promissory note was not stamped with a stamp of the value required by law. The High Court said: "the preamble of the Act shows that it became expedient to provide for the validation of certain promissory notes stamped with postage stamps of the denomination of two or four annas. The Act did not intend to validate documents insufficiently stamped." *Ambica Charan Nandy v. Kalipada Bhattacharya*, 28 C.W.N. cxlviii; 110 I.C. 747; I.L.T. 40 Cal. 191.

5th January, 1925.—The following notification was published in the Gazette of India Part I, page 36 dated Delhi, the 5th January, 1925.

No. 48.—In exercise of the powers conferred by the Indian Stamp Act, 1899, (II of 1899), the Governor-General in Council is pleased to direct that the following further amendment shall be made in the Indian Stamp rules, 1914 namely,—

For rule 16 of the said rules the following rule shall be substituted namely,

16.—Except as otherwise provided by these rules, the adhesive stamp used to denote duty shall be the requisite number of stamps bearing the words "four annas", "two annas" or "one anna" or "half anna" and such stamp may be inscribed for use either for postage or for revenue or both postage and revenue.

GOVERNMENT OF INDIA RULES.
FINANCE DEPARTMENT (CENTRAL REVENUES).
NOTIFICATION.

(Published in the Gazette of India dated 9th May, 1925, Part I).

STAMPS.

Simla, the 5th May, 1925.

(as amended up to December, 1932).

No. C-63 Stamps 25.—In exercise of the powers conferred by the Indian Stamp Act, 1899 (II of 1899), and in supersession of the notification of the Government of India in the Finance Department, No. 1140-F., dated the 14th August 1914, and of all notifications amending the same, the Governor General in Council is pleased to make the following rules, namely:—

RULES UNDER THE INDIAN STAMP ACT, 1899.

CHAPTER I.

Preliminary.

Short title. 1. These rules may be called the Indian Stamp Rules, 1925.

Definitions. 2. In these rules—

- (a) "The Act" means the Indian Stamp Act, 1899 (II of 1899).
- (b) "Section" means a section of the Act.
- (c) "Schedule" means a schedule of the Act.
- (d) "Superintendent of Stamps" means the Superintendent of Stamps, Madras, Bombay, Karachi, Rangoon or Nagpur and includes the Financial Commissioner, Punjab, and any other officer appointed by the Local Government to perform the functions of a Superintendent of Stamps.

Description of stamps. 3. (1) Except as otherwise provided by the Act or by these rules:—

(i) all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps issued by Government for the purposes of the Act, and

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for an instrument of any other kind.

(2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely :—

- (a) impressed stamps, and
- (b) adhesive stamps.

CHAPTER II.

Of Impressed Stamps.

4. (1) Hundis, other than hundis which may be stamped with an adhesive stamp under section 11, shall be written on paper as follows, namely :—

(a) A hundi payable otherwise than on demand, but not at more than one year after date or sight, and for an amount not exceeding rupees thirty thousand in value, shall be written on paper on which a stamp of the proper value bearing the word 'hundi' has been engraved or embossed.

(b) A hundi for an amount exceeding rupees thirty thousand in value, or payable at more than one year after date or sight, shall be written on paper supplied for sale by the Government, to which a label has been affixed by the Collector of Stamp Revenue, Calcutta, or a Superintendent of Stamps, and impressed by such officer in the manner prescribed by rule 11.

(2) Every sheet of paper on which a hundi is written shall be not less than 8½ inches long and 5½ inches wide and no plain paper shall be joined thereto.

(3) The provisions of sub-section (1) of rule 7 shall apply in the case of hundis.

5. A promissory note or bill-of-exchange shall, except as provided by section 11 or by rules 13 and 17, be written on paper on which a stamp of the proper value, with or without the word 'hundi', has been engraved or embossed.

6. Every other instrument chargeable with duty shall, except as provided by section 11 or by rules 10, 12 and 13, be written on paper on which a stamp of the proper value, not bearing the word 'hundi' has been engraved or embossed.

7. (1) Where two or more sheets of papers on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used.

Provision where single sheet of paper is insufficient.

(2) Where a single sheet of paper, not being paper bearing an impressed hundi-stamp, is insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument :

Provided that in every such case a substantial part of the instrument shall be written on the sheet which bears the stamp before any part is written on the plain paper subjoined.

8. The duty on any instrument which is chargeable with a duty of one anna under the Act or of two annas under articles 5, 19, 36, 37, 43, 49 and 52 of Schedule I may be denoted by a coloured impression marked on a skeleton form of such instrument by the Collector of Stamp Revenue, Calcutta or the Superintendent of Stamps.

9. The officers specified in Appendix I and any officer appointed in this behalf by the Local Government of "The proper officer." a Governor's Province, are empowered to affix and impress or perforate labels, and each of them shall be deemed to be "the proper officer" for the purposes of the Act and of these rules.

Affixing and impressing or perforating of labels by proper officer permissible in certain cases. 10. Labels may be affixed and impressed or perforated by the proper officer in the case of any of "the following instruments, namely :—

- (i) those specified in Appendix II, and the counterparts thereof other than instruments on which the duty is less than two annas ; and
- (ii) those specified in Appendix III, when written in any European language, and accompanied, if the language is not English by a translation in English :

Provided that the Local Government may direct that this rule shall apply, subject to any conditions which it may prescribe, to agreements or memoranda of agreement such as are specified in Appendix III, when written in any oriental language.

11. (1) The proper officer shall, upon any instrument specified in rule 10 being brought to him before it is executed, and upon application being made to him, affix thereto a label or labels of such value as the applicant may require and pay for, and impress or perforate such label or labels by means of a stamping-machine, or a perforating machine, and also stamp or write on the face of the label or labels the date of impressing or perforating the same. In the case of instruments written on parchment, the labels shall be further secured by means of metallic eyelets.

(2) On affixing any label or labels under this rule, the proper officer shall, where the duty amounts to rupees five or upwards, write on the face of the label or labels his initials, and where the duty amounts to rupees twenty or upwards, shall also attach his usual signature to the instrument immediately under the label or labels.

(3) The following officers may discharge the functions of the proper officer under sub-rule (2), namely :—

- (i) Any principal assistant of the proper officer empowered by the Local Government in this behalf ;
- (ii) In Calcutta, the Deputy Collector and the Superintendent of the Stamp Department of the Collector's office ;
- (iii) In Karachi, the Assistant Superintendent of Stamps ; and
- (iv) In Lahore, the head or any other Assistant for the time being in charge of the stamping work in the Financial Commissioner's office.

12. (1) Instruments executed out of British India and requiring to be stamped after their receipt in British India (other than instruments which, under section 11 or rule 13, may be stamped with adhesive stamps) shall be stamped with impressed labels.

Certain instruments to be stamped with impressed labels.

(2) Where any such instrument as aforesaid is taken to the Collector under section 18, sub-section (2), the Collector, unless he is himself the proper officer, shall send the instrument to the proper officer, remitting the amount of duty paid in respect thereof ; and the proper officer shall stamp the instrument in the manner prescribed by rule 11, and return it to the Collector for delivery to the person by whom it was produced.

CHAPTER III.

Of Adhesive Stamps.

Use of adhesive stamps on certain instruments.

13. The following instruments may be stamped with adhesive stamps namely :—

- (a) Bills-of-exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed one anna for each part of the set.
- (b) Transfers of debentures of public companies and associations.
- (c) Copies of maps and plans and printed copies when chargeable with duty under Article 24 of Schedule I.

(d) Instruments chargeable with duty under Articles 5 (a) and (b) and 43 of Schedule I.

(e) Instruments chargeable with stamp duty under Article 47 of Schedule I.

(f) Instruments chargeable with stamp duty under Articles 19 36, 37, 49 (a) (ii) and (iii) and 52 of Schedule I.

13-A. Notwithstanding anything contained in these rules whenever the stamp duty payable under the Act in respect of any instrument cannot be paid exactly by reason of the fact that the necessary stamps are not in circulation, the amount by which the payment of duty shall on that account be in defect shall be made up by the affixing of one-anna and half-anna adhesive stamps such as are described in rule 16, provided that a Local Government may direct that instead of such stamps adhesive court-fee stamps shall be used for the purpose.

14. When any instrument of transfer of shares in a Company or Association is written on a sheet of paper on which a stamp of the proper value is engraved or embossed and the value of the stamp so engraved or embossed is subsequently, in consequence of a rise in the value of such shares, found to fall short of the amount of duty chargeable under Article 62(a) of Schedule I, one or more adhesive stamps bearing the words "Share Transfer" may be used to make up the amount required.

15. When adhesive stamps are used to indicate the duty chargeable on entry as an Advocate, Vakil or Enrolment of Advocates, Vakils or Attorneys, Attorney on the roll of any High Court such stamps shall be affixed under the superintendence of a gazetted officer of the High Court, who shall obtain the stamp from the Superintendent of Stamps or other officer appointed in this behalf by the Local Government and account to him for it. Such gazetted officer shall, after affixing the stamp, write on the face of it his usual signature with the date thereof.

16. Except as otherwise provided by these rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words "Four annas" or "Two annas" or "One anna" or "Half anna" and such stamps may be inscribed for use either for postage or for revenue, or for both postage and revenue.

17. The following instruments when stamped with adhesive stamps shall be stamped with the following description of such stamps, namely :—

(a) Bills-of-exchange, cheques and promissory notes drawn or made out of British India and chargeable with a duty

of more than one anna : with stamps bearing the words "Foreign Bill."

- (b) Separate instruments of transfer of shares and transfers of debentures of Public Companies and Associations : with stamps bearing the words "Share Transfer."
- (c) Entry as an Advocate, Vakil or Attorney on the roll of any High Court : with stamps bearing the word "Advocate," "Vakil" or "Attorney," as the case may be.
- (d) Notarial acts : with foreign bill stamps bearing the word "Notarial."
- (e) Copies of maps or plans and printed copies certified to be true copies : with court-fee stamps.
- (f) Instruments chargeable with stamp-duty under Articles 5 (a) and (b) or 43 of Schedule I : with stamps bearing the words "Agreement" or "Brokers' Note" respectively.
- (g) Instruments chargeable with stamp-duty under Article 47 of Schedule I : with stamps bearing the word "Insurance."

CHAPTER IV.

Miscellaneous.

18. When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by endorsement that it is duly stamped :

Provided that, if application is made within three months of the execution of the instrument, and the Collector is satisfied that the improper description of stamp was used solely on account of the difficulty or inconvenience of procuring one of the proper description, he may remit the further payment of duty prescribed in this rule.

19. The Collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.

20. When an application is made for the payment, under Chapter V of the Act, of an allowance in respect of a stamp which has been spoiled or misused or for which the applicant has no immediate use or on renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then, if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the Local Government for destruction.

21. When the Collector makes a refund under section 55 he shall cancel the original debenture by writing on or across it the word "Cancelled" and his usual signature with the date thereof.

22. On the conviction of any offender under the Act, the Collector may grant to any person who appears to him to have contributed thereto a reward not exceeding such sum as the Local Government may fix in this behalf.

APPENDIX I.

"Proper Officers" within the meaning of Rule 9.

1. The Superintendent of Stamps.
2. The Superintendent of Stamps (Political Resident), Aden.
3. The Collector of Stamp Revenue, Calcutta.
4. The Collector, or, in the absence of the Collector from

head-quarters, the Treasury Officer, of each of the following Districts namely :—

- (1) Godavari.
- (2) Tinnevely.
- (3) Malabar.
- (4) South Canara.
- (5) Chittagong.

5. The Treasury Officers, Moulmein, Akyab, Tavoy and Bassein.

6. The Deputy Tahsildar and the Sub-Collector at Tuticorin and the Sarishtadar-Magistrate at Cochin in respect of any instrument for which the value of the labels required does not exceed fifty rupees, and the Tahsildar at Kottayam in respect of any instrument for which the value of the labels required does not exceed one rupee.

7. The Assistant Superintendent of Stamps, Assam.

8. The Sub-divisional Officer, or, in the absence of the Sub-divisional Officer from head-quarters, the Sub-Treasury Officer of the Dhalbhum sub-division in the District of Singhbhum.

APPENDIX II.

List of Instruments referred to in Rule 10 (i).

No. of Article
in Schedule I.

1.	Administration-bond	...	...	...	2
2.	Affidavits	...	...	...	4
3.	Appointments made in execution of a power	...	...	...	7
4.	Articles of Association of a Company	...	...	...	10
5.	Articles of clerkship	...	...	...	11
6.	Bills-of-lading	...	...	...	14
7.	Charter parties	...	...	...	20
8.	Declarations of trust	...	...	...	64A
9.	Instruments evidencing an agreement relating to (1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or (2) the pawn or pledge or hypothecation of movable property	...	...	...	6
10.	Leases partly printed or lithographed in an Oriental language, when the written matter does not exceed one-fourth of the printed matter	...	...	...	35
11.	Memoranda of Association of Companies	...	...	...	39
12.	Mortgages of crops	...	...	...	41
13.	Notes of protest by Masters of Ships	...	...	...	44
14.	Revocations of trust	...	...	...	64B
15.	Share-warrants issued by a Company in accordance with section 43 of the Indian Companies Act, 1913 (VII of 1913)	...	...	...	59
16.	Warrants for goods	...	...	...	65
17.	Notes or memorandum when the duty payable exceeds two annas	...	...	...	43B
18.	Transfers of the description mentioned in article 62, clauses (a) and (b) of Schedule I, when the duty payable exceeds Rs. 10.	...	...	...

APPENDIX III.

*List of Instruments referred to in Rule 10 (ii).*No. of Article
in Schedule I.

1. Agreements or memoranda of agreement which, in the opinion of the proper officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed	...	5
2. Instruments engrossed on parchment and written in the English style, which in the opinion of such officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed	... ..	...
3. Awards	... ..	12
4. Bills-of-exchange payable otherwise than on demand and drawn in British India	13 (b) and (c)	
5. Bonds	... .. 15, 16, 26, 34, 56, & 57	
6. Certificates of sale	... ..	18
7. Composition-deeds	... ..	22
8. Conveyances	... ..	23
9. Instruments imposing a further charge on mortgaged property	... ..	32
10. Instruments of apprenticeship	... ..	9
11. Instruments of co-partnership	... ..	46A
12. Instruments of dissolution of partnership	... ..	46B
13. Instruments of exchange	... ..	31
14. Instruments of gift	... ..	33
15. Instruments of partition	... ..	45
16. Leases	... ..	35
17. Letters of license	... ..	38
18. Mortgage-deeds	... ..	40
19. Powers-of-attorney	... ..	48
20. Reconveyances of mortgaged property	... ..	54
21. Releases	... ..	55
22. Settlements	... ..	58
23. Transfers of the description mentioned in Article 62, clauses (c), (d) and (e) of Schedule I.....	62 (c), (d) & (e).	

RULES UNDER S. 20.

C. No.—125 Stamps 25 dated the 18th September, 1925.—In exercise of the power conferred by section 20, sub-section (2) of the Indian Stamp Act, 1899 (II of 1899) and of all other powers in this behalf and in supersession of the notification of the Government of India in the Department of Commerce, No. 348 dated the 13th January, 1923 and of all the notifications amending the same, the Governor-General in Council is pleased to prescribe the following rates of exchange for the conversion of the currencies hereinafter specified respectively into the currency of British India for the purpose of calculating *ad valorem* duty on instruments chargeable therewith :—

CURRENCY.	SUM	EQUIVALENT IN CURRENCY OF BRITISH INDIA.
British	£1 Sterling	Rs. A. P. 13 5 4
French	1 Franc	0 1 9 (as amended)
German	1 Renten Mark	0 10 9
United States of America or Canadian	1 Dollar	2 12 0
Chinese (Shanghai)	1 Tael	2 2 6
¹ British Asiatic possessions (Straits)	1 Dollar	1 8 0
¹ Hongkong	1 Dollar	1 9 6
¹ Mexican	1 Dollar	1 9 6
Japanese	1 Yen	1 2 6
Persian	1 Kran	0 5 0

¹ That is the British Dollar and the Mexican Dollar which are in current use in the Straits Settlements and elsewhere.

REDUCTIONS AND REMISSIONS OF STAMP DUTY IN CERTAIN CASES.

*Published in the India Gazette dated the 12th September,
1931 Part, 1 Pages 908 to 915.*

STAMPS.

The 12th September, 1931.

No. 6.—In exercise of the powers conferred by clause (a) of section 9 of the Indian Stamp Act, 1899 (II of 1899), and in supersession of all previous Notifications issued from time to time under the said clause of the said section, the Governor General in Council is pleased to reduce, to the extent set forth in each case, the duties chargeable under the said Act in respect of the instruments hereinafter described under Nos. 3, 4, 10, 23, 25, 48, 74, 89, 90, 91, 98, 102, 109, 110 & 111, and to remit the duties so chargeable in respect of instruments of the other classes hereinafter described :—

A.—LAND REVENUE.

General.

1. Lease or counterpart thereof executed at the time of settlement made directly by the Government with the existing occupant of land, whether a zamindar or a tenant, and whether self-cultivating or not ;

Provided that no fine or premium is paid in consideration of the lease.

2. Agreement of the kind described in the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), section 43.

3. Promissory note payable on demand to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under section 57 of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879).—Duty reduced to one anna.

4. Promissory note payable otherwise than on demand, and not payable at more than one year after date or sight, to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under section 57 of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879).—Duty reduced to the amount chargeable under Article No. 13 (b) of Schedule 1 of the Indian Stamp Act, 1899, on a bill of exchange for the same amount.

5. Instrument executed for the purpose of securing the repayment of a loan made, or to be made, under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans

Act, 1884 (XII of 1884), including an instrument whereby a landlord binds himself to consent to the transfer, in the event of default in such repayment, of any land, or interest in land, on the security of which any such loan is made to his tenant.

6. Receipt given by a person, for advances exceeding Rs. 20 received by him from the Government under the Agriculturists' Loans Act, 1884 (XII of 1884).

In Bombay.

7. Agreement respecting the occupancy of land, whether surveyed or not, and the payment of the land-revenue therefor, executed under the Bombay Land Revenue Code, 1879 (Bombay Act, V of 1879), or any rules made under that Act.

8. Lease granted under Rule 31 of the Rules published by the Government of Bombay under the Bombay Land Revenue Code, 1879 (Bombay Act, V of 1879).

9. Lease granted by the Government under rules made under section 32 of the Indian Forest Act, 1927 (XVI of 1927), or purporting to be so granted, of land situated in a protected forest in any of the following villages in the Akola Taluka of the district of Ahmednagar in the Presidency of Bombay, namely :—Ambit, Ghatghar, Kumshed, Lohali, Kotul, Pachnai, Panjare, Sanrad, Shingunwadi and Uddavane.

10. Agreement, or memorandum of an agreement, whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the rights so relinquished.—Duty reduced to four annas.

11. Instrument executed by an Inamdar in the Bombay Presidency whereby he undertakes to suspend or remit rent due from a tenant or tenants in consideration of a suspension or remission granted by the Government in respect of his own *judi* or quit rent.

12. Instrument executed by a landlord in the Bombay Presidency whereby he agrees to remit rent due from a tenant in consideration of a remission granted by the Government in respect of his own rent.

In Burma.

13. Certified copy of a map showing the holdings of cultivators in Burma when furnished to such a cultivator.

14. Instrument executed with the object of securing due payment for seed or agricultural implements purchased on credit from the Agricultural Department.

15. Instrument executed for the purpose of securing the due payment of rent of a fishery leased under section 9, clause (1), of the Burma Fisheries Act, 1905 (Bur. Act III of 1905).

In the Central Provinces.

16. Bail-bond executed by a surety to produce a person on whom a bailable warrant of arrest has been issued under section 20 (3) of the Central Provinces Land Revenue Act, 1917.

17. Conveyance by endorsement of rights secured by an instrument known as a 'Satta'.

18. Copy or extract certified by a patwari to be a true copy of, or a true extract from records or papers which patwaris are required to prepare or keep by any rule made by the Governor in Council under section 227 (2) (d) of the Central Provinces Land Revenue Act, 1917 (II of 1917), where the copy or extract is furnished by a putwari to a malguzar or tenant of or in the village with which the copy or extract is concerned.

In Madras.

19. Patta granted by an officer of the Government in the Madras Presidency to a holder of land under a ryotwari settlement.

20. Instruments conveying land in the Madras Presidency granted by the Government to an individual for a pecuniary consideration.

In the United Provinces of Agra and Oudh.

21. Agreements of the kind described in section 50, sub-section (1), clause (a), and in section 69, clause (a), of the Agra Tenancy Act, 1926 (United Provinces Act, III of 1926) with respect to the enhancement of the rent of an exproprietary, occupancy or non-occupancy tenant.

22. Authority in writing to distrain referred to in section 75 of the Oudh Rent Act, 1886 (XXII of 1886), and in section 153, clause (G), of the Agra Tenancy Act, 1926 (United Provinces Act, III of 1926).

23. Mortgage deed executed afresh in lieu of a previous mortgage deed for the purpose of giving effect to the provisions of section 9, sub-section (2) or section 17 of the Bundelkhand Alienation of Land Act, 1903 (United Provinces Act II of 1903).—So much of the duty remitted as is not in excess of the duty already paid in respect of the previous mortgage deed.

In the Punjab and the North-West Frontier Province.

24. Copy of the map or plan certified to be a true copy of a map or plan prepared or maintained under Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887), whether such copy is granted under Rule 71 of the Rules under the said Act or Rule 3 (iv) of the Financial Commissioner's Standing Order No. 5 :—

Provided that the copy is supplied for the private use of the person applying for it, and that it is not used or intended to be used as evidence in a Court of Justice or before any public officer.

25. Mortgage deed executed afresh in lieu of a previous mortgage deed for the purpose of giving effect to the provisions of section 9, sub-section (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900).—So much of the duty remitted as is not in excess of the duty already paid in respect of the previous mortgage deed.

26. Instrument of the kind referred to in section 8, sub-section (1), clause (b), of the Punjab Laws Act, 1872 (IV of 1872), and in section 30, sub-section (1), clause (b) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

In Assam.

27. Patta granted on behalf of the Government in Assam to a holder of land for ordinary cultivation.

28. Agreement or counterpart of an agreement executed in the course of arrangements made by the local Government for the collection of land-revenue and cesses.

29. Security bond or mortgage deed executed by a person who has entered into an agreement to collect and pay in land-revenue and cesses, or by the surety of such a person to secure the due accounting for money collected by that person under such agreement.

In Bihar and Orissa.

30. Instrument executed by members of the Mundari and of other aboriginal tribes of the Ranchi district as security for the repayment of advances received by them from the Government under the provision of article 9 of schedule I of the Bihar and Orissa, Public Demands Recovery Act, 1914 (B. & O. Act, IV of 1914), for the purpose of redeeming their holdings.

B. — OPIUM EXCISE AND HEMP DRUGS.

31. Receipt given by an opium cultivator or his representative or by a lambardar or khattadar in the Benares Agency for money paid to him by the Government as an advance for the cultivation of opium.

32. Bond when executed by the surety of a middleman (lambardar or khattadar) taking an advance for the cultivation of the poppy for the Government.

33. Agreement or memorandum of agreement made by a raiyat or by a middleman (lambardar or khattadar) for the cultivation of the poppy for the Government.

34. Power-of-attorney executed in favour of a lambardar or khattadar by an opium cultivator, who does not attend personally to receive an advance or to enter into a contract for the cultivation of the poppy for the Government.

35. Instrument of the nature of a mortgage deed when executed by the surety of a middleman (lambardar or khattadar) taking an advance for the cultivation of the poppy for the Government.

36. Security bond or mortgage deed for the fulfilment of any contract deed for the supply of weightment articles in use in the Benares Opium Agency.

37. Contract deed for the supply of weightment articles in use in the Benares Opium Agency.

38. Agreement or memorandum of agreement made by a raiyat for, or in respect of the cultivation of the hemp plant in the district of Rajshai.

39. Agreement or memorandum of agreement for the cultivation of the hemp plant made by a cultivator in the Madras Presidency.

C. — FOREST DEPARTMENT.

40. Agreement or security bond required to be executed, under the rules to regulate the training and appointments in the Subordinate Forest Service, by a student and his surety previous to his entry into a Forest School or College in British India.

41. Instrument in the nature of a conveyance by the Government of standing trees or any other forest produce in a Government forest; and also the following instruments :—

(1) *In Madras, Bengal, Bihar, and Orissa, Central Provinces and Assam, .*

- (i) Contract for the collection of minor produce, barks, etc. ;
- (ii) Contract for felling and removing tree ;
- (iii) Contract for the collection, removal and disposal of stock in coupes subject to obligation to coppice and clear the area ;
- (iv) Contract for the purchase of timber or firewood to be felled or cut departmentally ;
- (v) Contract of the usufruct of trees and topes ;
- (vi) Contract for the felling or cutting and purchase of timber or firewood ;
- (vii) Kancha or grazing lease ;
- (viii) Agreement for felling and conversion of timber ;
- (ix) Agreement for right to collect seigniorage on minor produce brought for sale by hill tribes ;
- (x) Agreement for cultivation under the taungya system in reserved or protected forests ;
- (xi) Agreement for hunting, shooting or fishing in reserved or protected forests.

(2) *In Bombay.*

- (i) Agreement for the felling, conversion, collection and transport of forest produce ;

- (ii) Agreement for the felling, collection, removal and purchase of timber, fire-wood, etc. ;
- (iii) Agreement for the collection, removal and purchase of minor forest produce ;
- (iv) Agreement for the cutting, removal and purchase of grass ;
- (v) Agreement for the cutting, collection, pressing and storage of grass ;
- (vi) Agreement for the grazing of cattle ;
- (vii) Agreement for the manufacture and purchase of minor forest produce ;
- (viii) Agreement for the purchase and resale to the public of firewood ;
- (ix) Agreement for the lease of forest land ;
- (x) Agreement for constructing roads and buildings ;
- (xi) Agreement for the supply of clothing articles for forest subordinates ;
- (xii) Agreement for leasing private buildings and land for Government officers, depots, residences of Government servants and other purposes, of a like nature.

(3) *In the United Provinces.*

- (i) Contract for the collection of minor produce, barks, etc. ;
- (ii) Contract for felling and removing trees ;
- (iii) Contract for the purchase of timber or firewood to be felled or cut departmentally ;
- (iv) Contract of the usufruct of trees and topes ;
- (v) Contract for the felling or cutting and purchase of timber or firewood ;
- (vi) Agreement for felling and conversion of timber.

(4) *In Burma.*

- (i) Contract or agreement for removing, collecting, felling, extracting, disposing of, or purchasing forest produce—
 - (a) on behalf of Government (departmental working) or
 - (b) by purchasers (to include all forms of long or short term leases or purchase contracts) ;
- (ii) Contract or agreement with forest villagers—
 - (a) for the supply of labour,
 - (b) for cultivation under the taung-ya system.

D.—SCHOLARSHIPS, STIPENDS, ETC.

42. Agreement, bond or security bond to be required to be executed by or on behalf of the holder of a scholarship or stipend awarded by Government.

43. Agreement or security bond required to be executed by or on behalf of a non-stipendiary student of any Government or Government Aided Normal School in Burma who is exempted from charge of tuition.

44. Security bond taken under the authority of the Government from Military Medical Student of the Assistant Surgeon or the Sub-Assistant Surgeon Branch of the Indian Medical Department or from a woman stipendiary of the Government School of Indian Medicine, Madras, or from the surety of any student or woman stipendiary.

45. Agreement or security bond required to be executed by a student or his sureties previous to his entry into the Madras Veterinary College or to any Agricultural or Veterinary College in Assam or Burma.

E.—EDUCATIONAL INSTITUTIONS.

46. Instrument executed in favour of Government by the Managing Authority of an Educational Institution in Burma, Assam or Ajmere-Merwara aided by Government with the object of securing by hypothecation of land and buildings belonging to the institution, that the grant-in-aid to the institution are to be refunded if the land and buildings are not used for educational purposes or if education given by the institution is defective or unsatisfactory.

47. Instruments executed in favour of the Government by the Managing authority of an Educational Institution in Assam with the object of securing the due use of land which such institution has been permitted to occupy under the Assam Grant-in-aid Code.

48. Trust deed entered into in compliance with the Rules for the time being in force in the Bombay Presidency, the Punjab, Bengal, Bihar and Orissa and Assam regulating grants-in-aid made by the Government for building purposes to schools and colleges in those Provinces,—Duty reduced to the amount payable in respect of a bond for the like amount or value, or to Rs. 15, whichever shall be less.

F.—MEDICAL DEPARTMENT.

49. Bond required to be executed by persons selected by the Government of Assam for appointment as Civil Assistant or Sub-assistant Surgeon.

50. Agreement executed by a private medical practitioner on acceptance of service under the Secretary of State for India in Council as a Surgeon to His Majesty's forces with the temporary ranks of Lieutenant in the Indian Medical Service.

(Entries 42-50 Substituted by Notification No. 8 dated 3-9-32).

G.—POSTS AND TELEGRAPHS DEPARTMENT.

54. Letter which a person depositing money in a Post Office Savings Bank, as security to the Government or a local authority for the due execution of an office or for the fulfilment of a contract or for any other purpose, is required to address to the Postmaster in charge of the Post Office Savings Bank agreeing to special conditions with respect to the application and withdrawal of the money deposited and the payment of interest accruing due thereon.

55. Receipt given by, or on behalf of, a depositor in a Post Office Savings Bank for a sum of money withdrawn from any such Bank.

56. Receipt endorsed by the payee on a Postal Money Order or given by the payee to the Post Office for a sum paid to him in adjustment of a short or wrong payment of such an Order.

57. Receipt endorsed by the holder of a Post Office Cash Certificate at the time of its discharge.

58. Receipt given by an officer of the Indian Post and Telegraph Department in respect of a sum paid to him by the Government as advance for the purchase of railway or steamer tickets.

H.—RAILWAYS AND INLAND STEAMER COMPANIES.

59. Agreement made with a Railway Company or Administration or an Inland Steamer Company for the conveyance of goods.

60. Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a passenger permitted to travel without payment of fare, indemnifying such authority or Company from any claim for damages in case of accident or injury.

61. Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a consignee (when the Railway receipt or bill of lading is not produced) in respect of the delivery of articles carried at half parcels rates or at goods rates, namely: fresh fish, fruits, vegetables, bazar baskets, bread, meat, ice, and other perishable articles.

62. Agreement made with the Railway Company or Administration which purports to limit the responsibility of the Company or Administration as declared by the Indian Railways Act, 1890 (IX of 1890), section 72, sub-section (1), and is in a form approved by the Governor-General in Council under sub-section (2) of that section.

63. Receipt or bill of lading issued by a Railway Company or Administration or an Inland Steamer Company for the fare for the conveyance of passengers or goods, or both, or animals, or for any charges incidental to the conveyance thereof or given to such Company or Administration or Inland Steamer Company for the refund of an overcharge made in respect of such fare or charges.

64. Receipt given by a Railway Company or Administration or an Inland Steamer Company for money received by it from another Railway Company or Administration or Inland Steamer Company, or from a Tramway Company or other Carrying Company on account of its share of fares or freight for the conveyance in through traffic of passengers or goods or both or of animals.

I.—GOVERNMENT OFFICERS AND CONTRACTORS.

65. Agreement paper passed by a contractor of the Supply and Transport Corps where his security deposit is transferred to a Post Office Savings Bank.

66. Instrument in the nature of a memorandum or agreement furnished to, or made or entered into with a Supply and Transport officer by a contractor.

67. Agreement or declaration by which a tender made to a Supply and Transport officer is accepted as a contract, where the deposit of the contractor as security for his contract is made in Government of India Promissory Notes or in cash.

68. Instrument in the nature of a memorandum, agreement or security bond furnished to or made, or entered into by a contractor for the due performance of his contract with :—

- (a) the Ordinance Department, or
- (b) the Army Clothing Department, or
- (c) the Military Farms Department, or
- (d) the Opium Department, or
- (e) the Forest Department, or
- (f) the State Railway Department, or
- (g) the Public Works Department, or any other administrative department empowered to execute public works, or
- (h) the Revenue Department in the Madras Presidenay in respect of minor irrigation works contracts, or
- (i) the Public Health Department in Bihar and Orissa or in the United Provinces, or
- (j) the Police Department in Assam in respect of contracts for the supply of rations to Assam Rifles and the Civil Police,
- (k) the Industries Department in the United Provinces in respect of contractors for the supply of stores for the public service.
- (l) The Jails Department in Assam in respect of contracts for the supply of articles for use in jails in that Province.

69. Agreement and security bond executed by contractors in respect of village *chavadies* and cattle pounds in the Madras Presidency.

70. Agreement executed on the United Provinces Public Works Department, Manual Form No. 36 (Agreement by Zeminders allowed to build wells, etc., on Government land) or on the Manual Form No. 37. (Agreement for the erection of buildings, etc., on Government land).

71. Instrument furnished to or made or entered into with any of the Departments mentioned in item 68 by a contractor under which the due performance of any contract is secured by the deposit of money or of Government or other securities; and (except in Burma) an instrument under which materials belonging to a contractor are mortgaged as security for an advance made to him by any such Department.

72. Mortgage deed executed by an officer of Government in Civil or Military employ for securing the payment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.

73. Instrument of re-conveyance of mortgaged property executed by Government in favour of an officer in Civil or Military employ on the repayment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.

74. Agreement which has been or may be entered into in compliance with the rules prescribed in Appendix XXII-A of Regulations for the Army in India for regulating the deposits of regimental funds with private banks or firms or such other rules for that purpose as may hereafter be in force.—Duty reduced to the amount payable in respect of a bond for like amount or value, or to Rs. 5, whichever shall be less.

75. Mortgage deed or agreement executed by an officer of the Government for securing the repayment of an advance received by him from the Government for the purpose of purchasing a motor car, a motor boat, a motor cycle, a horse, a cycle, or a typewriter.

76. Agreement executed by an officer of the Government relating to the repayment of an advance received by him from the Government for defraying the cost of passages for himself or his family or both.

77. Receipt given for pension or allowances paid by Government to an heir of a deceased non-commissioned officer or soldier in respect of service in His Majesty's Army or in His Majesty's Indian Army.

78. Authority in writing executed under rule 1, Order XXVIII of the Code of Civil Procedure, 1908, (Act V of 1908), by any officer or soldier actually serving the Government in a military capacity authorising any person to sue or defend in his stead in a Civil Court.

J.—OTHER DOCUMENTS.

79. Bill of exchange drawn in Mysore, on which the full rate of stamp duty has been paid there, where the same is negotiated in British India.

80. Receipt given for payment of interest on Government of India Promissory Notes.

81. Letter of authority or power-of-attorney executed for the sole purpose of authorising one or more of the joint-holders of a Government security to give on behalf of the other or others of them, or any one or more of them, a discharge for interest payable on such security or on any renewed security issued in lieu thereof.

82. Power-of-attorney furnished to a relative, servant, or dependant under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), section 68.

83. Copy of an instrument which a Village Registrar has to deliver to a party under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), section 58.

84. Sanad of Jagir or other instrument conveying land granted to an individual by the Government otherwise than for a pecuniary consideration.

85. Instrument of exchange executed by a private person where land is given by him for public purposes in exchange for other land granted to him by the Government.

86. Transfer by endorsement of a mortgage of rates and taxes authorised by any Act for the time being in force in British India.

87. Deed evidencing transfer of any debenture floated by the Central Land Mortgage Bank, Madras.

88. *See entry 48 Supra.*

89. Agreement executed for service or for performance of work in any estate not less than ten acres in extent, whether held by one person or by more persons than one as co-owners, and whether in one or more blocks, and situated in British India (excluding Coorg and Assam) or in Mysore, which is being prepared for the production of, or actually produces, tea, coffee, rubber, pepper, cardamom or cinchona, where the advance given under agreement does not exceed fifty rupees.—Duty reduced to one anna.

90. Agreement executed for service or for performance of work in any estate not less than ten acres in extent, whether held by one person or by more persons than one as co-owners, and whether in one or more blocks, and situated in Coorg, which is being prepared for the production of, or actually produces, coffee, tea, rubber, cardamom, fibre, paddy, or any other agricultural product, where the advance given under such agreement does not exceed fifty rupees.—Duty reduced to six annas.

91. Kabuliyat executed by a Ghatwal of any of the 52 Sarkar Panchaki and Be Panchaki Ghats, or of the 186 Zamindari Panchaki Ghats, in the district of Bankura in Bengal.—Duty reduced to the amount payable in respect of a conveyance for a consideration equal to the amount or value of the average annual rent reserved.

92. Instrument of transfer of shares registered in a branch register in the United Kingdom under the provisions section 41 of Indian Companies Act, 1913 (VII of 1913), which has paid the stamp duty leviable thereon in accordance with the law for the time being in force in the United Kingdom.

93. Receipt given by a gangman on a famine relief work in the Bombay Presidency in respect of sums exceeding Rs. 20 paid to him on account of the wages of relief workers.

94. Agreement between creditor and debtor to refer their claims to arbitration made in the Central Provinces in the course of conciliation proceedings approved by the Local Government, and the award made in virtue of such agreement.

95. Authority in writing (general or special) authorising an agent to appear and plead under section 41 of the United Provinces Village Panchayat Act, 1920 (U. P. act VI of 1920) or under section 24 of the Madras Village Courts Act, 1888 (Madras Act 1 of 1889).

96. Lease of a fishery granted by the Government in Assam.

97. Agreement or counterpart of an agreement entered into by the owner of a "token" animal and the Government in pursuance of any rules for the time being in force under section 30 of the Punjab Military Transport Act, 1916 (Punjab Act 1 of 1916).

98. Attested instrument evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan, or of an existing or future debt.—Duty reduced to the amount chargeable on a bill of exchange under Article No. 13 (b) of Schedule I of the Stamp Act, 1899, for the amount secured, if such loan or debt is repayable on demand or more than three months from the date of the instrument; and to half that amount, if such loan or debt is repayable not more than three months from the date of the instrument.

99. Unattested instrument evidencing an agreement relating to the hypothecation of movable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt.

100. Instrument executed by, or on behalf of, or in favour of the Trustees for the Development of the City of Rangoon, in respect of immovable property vested in them under sub-section (1) or sub-section (3) of section 58 of the Rangoon Development Trust Act, 1920, or exchanged for any such immoveable property or purchased from

the revenues of such immoveable property in cases where but for this exemption the Trustees for the Development of the City of Rangoon would be liable to pay the duty chargeable in respect of such instrument.

101. Instrument of entry as an Advocate or Vakil of the High Court of Judicature at Lahore of a pleader of the first grade, who has, as such pleader, paid stamp duty aggregating Rs. 1,000 or more for certificates issued or renewed in his favour under section 7 of the Legal Practitioners' Act, 1879 (XVIII of 1879).

102. Instrument of entry as an advocate or Vakil of the High Court of Judicature at Lahore of a pleader of the first grade who has, as such pleader, paid for certificates issued or renewed in his favour, under section 7 of the Legal Practitioners' Act, 1879 (XVIII of 1879), stamp duty aggregating more than Rs. 500 but less than Rs. 1,000.—Duty reduced to the sum which together with the aggregate stamp duty already paid shall make up Rs. 1,000.

103. Instrument of transfer of Government Stock registered in the book debt account.

104. Instrument of release referred to in section 48 of the Indian Merchant Shipping Act, 1923 (XXI of 1923).

105. Decision or award of the Registrar of Co-operative Societies for the Central Provinces and the award of arbitrators in any dispute in which a co-operative society in British India is a party,

106. Receipt or bill of lading issued by the Commercial Carrying Company, Ltd., for the fare for the conveyance of passengers or goods or both or receipt given by the said Company for the refund of an over-charge made in respect of such fare.

107. Receipt given for interest paid in British India on securities of the Mysore Darbar.

108. Agreement between an employer and a workman employed by or under him regarding the payment of compensation under the Workmen's Compensation Act, 1923 (VIII of 1923).

109. In the United Provinces and the Provinces of Assam and Burma, a mortgage deed being a collateral or auxiliary or additional security or being by way of further assurance where the principal or primary security is duly stamped, in any case in which the sum secured is in excess of Rs. 20,000.—Duty reduced to the amount of duty which would be chargeable under Article 40 (c) of the First Schedule to the Indian Stamp Act, 1899, if the sum secured were Rs. 20,000.

110. Mortgage deed being collateral or auxiliary or additional security or being by way of further assurance.—Duty reduced to Rs. 20 in the Presidency of Bombay, to Rs. 15 in the Presidency of Madras or in the Province of the Punjab and to Rs. 10 in the Presidency of Bengal, the Central Provinces and the Province of Bihar and Orissa provided that the duty paid on the principal or primary security exceeds the amount specified for that presidency or province.

111. Proxy empowering a person to vote at a meeting of creditors.—Duty reduced to the rate chargeable on a proxy empowering a person to vote at any one meeting of members of an incorporated Company.

112. Instrument cancelling a Will.

113. Renewal of any of the Foreshore securities issued by the Trustees of the Port of Bombay under the provisions of section 30 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879).

114. Indemnity Bonds executed in pursuance of Royal Air Force Instruction (India), No. 5 of 1931 by a non-entitled person undertaking passenger flights in accordance with clause 1 of paragraph 797-A. and clause 2 of paragraph 798 of King's Regulations and Air Council Instructions.

115. Mortgage deed securing the repayment of a loan advanced or to be advanced under the Madras State Aid to Industries Act, 1923 (Madras Act V of 1923), to a cottage industrialist or owner of a small concern, the capital outlay of which does not exceed one thousand rupees.

116. Agreement or memorandum of agreement relating to the hire of a bicycle for a period of less than a week.

117. Instrument executed in the areas mentioned in the schedule hereto attached in respect of which the stamp duty with which it is chargeable under the stamp law for the time being in force in the said areas has been paid in accordance with the said law.

SCHEDULE.

AREAS.

1. Agency territories in Baluchistan.
2. The District of Abu.
3. The cantonments of Mhow, Neemuch, and Nowgong (including Civil Lines) in the Central India Agency and Baroda.
4. The Indore Residency Bazars.
5. Railway lands within the limits of Central India and Rajputana Agencies over which the Governor General in Council exercises jurisdiction.
6. The areas in the Hyderabad State in which the Governor General in Council exercises jurisdiction through the Resident at Hyderabad.
7. Berar.
8. The Civil and Military Station of Bangalore.

9. Railway lands in the Mysore State over which the Governor General in Council exercises jurisdiction.

10. Railway lands in the Baroda State and in States in the Political control of the Government of Bombay, over which jurisdiction has been ceded to the British Government and to which the provisions of the Indian Stamp Act, 1899, have been applied.

11. Railway lands in Jammu and Kashmir and in States in the Punjab over which the Governor General in Council exercises jurisdiction.

OTHER REMISSIONS.

563-F. of the 25th November, 1912 :—

to remit the duty chargeable under the said Act, on counterpart agreements executed under section 31 of the Bombay Abkari Act, 1878 (Bombay Act V of 1878).

1873-F. of the 3rd December, 1911 :—

to remit the duty chargeable under the said Act, on a written authority executed under rule 1, Order XXVIII. of the Code of Civil Procedure, 1908 (Act V of 1908), by any officer or soldier actually serving the Government in a military capacity authorising any person to use or defend in his stead in a Civil Court. (*See entry No. 78 supra*).

1112-F. of the 25th June, 1915 :—

to remit the duty chargeable under the said Act, on the instruments of release referred to in section 46 of the Indian Merchant Shipping Act, 1859 (I of 1859). (*See entry No. 104 supra*).

940-F. of the 22nd June, 1916 :—

to remit the duty chargeable under article 12 of Schedule I of the said Act, on awards of arbitrators in all disputes to which Co-operative Societies in the Bombay Presidency are parties.

1483-F. of the 1st November, 1916 :—

to remit with effect from the 4th August 1914, the duty chargeable under the said Act, on receipts given by officers, prisoners of war and ex-Ottoman Government Officials for their pay and allowances while interned in India.

997-F. of the 4th May, 1917 :—

to remit the duty chargeable under the said Act, on the instruments hereinafter described, namely.

Agreements to refer to arbitration claims against Government in respect of the taking up of river craft in Mesopotamia and awards made in virtue of such agreements.

1670-F. of the 25th July, 1917 :—

to remit the duty chargeable under the said Act, in respect of agreements executed by private medical practitioners on acceptance

of service under the Secretary of State for India in Council as a Surgeon to His Majesty's Forces with the temporary rank of Lieutenant in the Indian Medical Service. (*See entry No. 50 supra*).

2531-F. of the 14th February, 1918 :—

to remit the stamp-duty chargeable under article 62 of Schedule I of the said Act, on instruments of transfer of Government stock registered in the book debt account. (*See entry No. 103 supra*).

2053-H. of the 25th August, 1920 :—

to remit any duty in excess of Rs. 15 chargeable under the said Act, on any instrument executed before the 31st December 1921, in a form approved by the Governor-General in Council by which any property which was formerly held for the purposes of any Missionary Society or Trading Society connected therewith and which has, under the provisions of the Enemy Trading Act, 1916, been vested in a custodian of Enemy Property appointed under the Enemy Trading Act, 1915, is transferred.

1870-F. of the 22nd June, 1921 :—

to remit the duty chargeable under article 53 of Schedule I to the said Act, on receipts given for interest paid in British India on the Mysore Darbar Twenty-year $6\frac{1}{2}$ per cent Bonds of 1920.

Dis.—No. 169—Oct. 1925.

to remit duty chargeable under the Stamp Act on cheques drawn on the Imperial Bank of Persia, Poona Branch, on behalf of His Majesty's Air Ministry. (*Gazette of India dated, 10th October, 1925 Part. I Page 929*).

1946-S. of the 17th September, 1921 :—

to remit the duty chargeable under article 53 of Schedule I to the said Act, on receipts given for interest paid in British India on the securities of the Mysore Darbar specified below :—

Ten-year 7 per cent. Income-Tax-Free Bonds of 1921.

Twenty to Thirty-year $6\frac{1}{2}$ per cent. Income-Tax-Free Bonds of 1921. (*See entry No. 107 supra*).

No. 359, dated the 16th June, 1923—to remit the duty chargeable on receipts paid in British India on securities of the Mysore Darbar.

5081 of the 30th September, 1922 :—

to remit the duty chargeable under clause (c) of article 5 of Schedule I to the said Act, on an agreement executed by an officer of the Government relating to the repayment of an advance received by him from the Government for defraying the cost of passages for himself or his family or both. (*See entry No. 76 supra*).

No. 258 dated May, 19, 1923 to remit duty chargeable under the said Act on receipt or bills of lading issued by the Commercial Carrying Ltd., for the fare for the conveyance of passengers

or goods, or both or in receipts given to the said company for the refund of an overcharge made in respect of such fare. (See *entry No. 63 supra*).

No. 1560-*F* dated the 1st December, 1923.

to remit the duty chargeable on a deed of conveyance to be made between the Commissioners of the Port of Rangoon incorporated under the Rangoon Port Trust, 1905 (hereinafter called the Commissioners of the Port of Rangoon incorporated under the Rangoon Port Trust 1905 (hereinafter called the Commissioners) of the one part, and the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (hereinafter called the Admiralty) of the other part, for the conveyance by the Commissioners to the Admiralty of the land described in the Schedule hereto annexed.

SCHEDULE.

All that piece or parcel of land being a portion of No.....Grant .Kwin Thauhyin Circle Kyanktan Township Hanthawaddy District measuring 397 acres bounded on the North by the left bank of the Shwele Creek, South by a line drawn from the Rangoon River at a distance of 1000 feet North post of the measured mile and running in an Easterly direction to a point 50 feet west of the Commissioner's boundary line, East by a line running parallel to and 50 feet west of the Commissioner's boundary line, and extending from the left bank of the Shwele Creek to the Southern boundary of the said land, and West by the Rangoon river as the same is delineated on the plan hereto annexed and thereon surrounded a red verge line.

*Remission under section 28 of Co-operative Societies Act, 1912.
(2 of 1912).*

2781-*F*. of the 23rd October, 1919 :—

to remit the stamp-duty with which under any law for the time being in force, instruments executed by or on behalf of any Society for the time being registered or deemed to be registered under that Act, or instruments executed by any officer or member of any such society and relating to the business of the society (other than cheques of individual members drawn against their currents with Co-operative Banks) are chargeable.

No. 4—10th May, 1930—

to remit the duty chargeable under Article 12 of the Stamp Act on the awards of arbitrators in all disputes to which Co-operative Societies in the North-West Frontier Province are parties.

No. 6—25th Oct. 1930—

to remit the duty chargeable under Art. 12 of Sch. 1 of the Stamp Act on the decisions of and awards of the Registrar of Co-operative Societies for the Central Provinces and the awards of arbitrators on all disputes in which Co-operative Societies in British India are parties.

Reduction on Mortgage deeds—

387.—*F.* of the 14th February, 1918 :—

to remit the duty chargeable under article 40 of Schedule I to the said Act, on an unattested instrument evidencing an agreement relating to the hypothecation of moveable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of existing or of future debt.

Dated the 3rd October, 1924.

No. 4643 :—In exercise of power conferred by clause (a) section 9 of the Indian Stamp Act (1899), the Governor-General-in-Council is pleased to direct that in the United Provinces and in the provinces of Assam and Burma the stamp duty chargeable under article 40 (c) of the first schedule to the said Act on a mortgage deed, being a collateral or auxiliary or additional security, or being by way of further assurance where the principal or primary security is duly stamped, shall, in any case in which the sum secured is in excess of Rs. 20,000 be reduced to the amount of duty which would be chargeable under the said schedule if the sum secured were Rs. 20,000 ;

(2) No. 4645 :—To reduce in the presidency of Bombay, where the stamp duty chargeable under article 40 (c) of the first schedule to the said Act on a mortgage deed, being collateral or auxiliary or additional security, or being by way of further assurance where the principal or primary security is duly stamped, exceeds Rs. 20, to that amount.

(3) No. 4647 :—To reduce in the presidency of Bombay when the stamp duty chargeable under Article 40 (c) of the first schedule to the said Act on a mortgage deed, being collateral or auxiliary or additional security, or being by way of further assurance where the principal or primary security is duly stamped, exceeds Rs. 15, to that amount.

(4) No. 4649 :—To reduce in the Presidency of Bengal, the Central Provinces, and the province of Bihar and Orissa, when the stamp duty chargeable under Article 40 (c) of the first schedule to the said Act on a mortgage deed, being collateral or auxiliary or additional security, or being by way of further assurance where the principal or primary security is duly stamped, exceeds Rs. 10, to that amount.

No. 12—1927.—To remit the duty chargeable under clause (b) of Art. 40 of Schedule 1 to the Indian Stamp Act on mortgage deed or agreements executed by an officer of the Government for securing repayment of an advance received by him from the Government for the purpose of purchasing a motor car, a motor boat, a motor cycle, a horse, a cycle, or a type-writer—(*Published G. of India Part 1, page 932, 1927*).

No. 2—28-5-32—To remit the duty chargeable under the said Act on a deed of conveyance to be made between His Majesty's Secretary of State for India in Council of the one part and the Madras Association for the blind of the other part for the conveyance by the said Secretary of State in the said Association of a portion of the Poona-mallee Barracks situated in Madras.

Workmen's Compensation Act (Act VIII of 1923).

Published in the Gazette of India dated the 28th day of June, 1924.

No. 2645 dated the 26th of June, 1924.

In exercise of the powers conferred by clause (a) of section 9 of the Indian Stamp Act, 1899 (II of 1899) the Governor-General in Council is pleased to direct that, where the stamp duty is chargeable under the said Act on any insurance policy indemnifying any person against liability to pay damages on account of accidents to workmen employed by or under him or against liability to pay compensation under the Workmen's Compensation Act, (VIII of 1923) exceeds the amount which would be chargeable if the duty were calculated at the rate of one-tenth per cent. of the premium payable the duty chargeable shall be reduced to that amount.

No. 2646.—To remit the stamp duty chargeable on agreements between employers and workmen employed by or under them regarding the payment of compensation under the Workmen's Compensation Act, 1923 (VIII of 1923).

No. 3—1926.—To remit the stamp duty chargeable under the said Act on cheques drawn by a commissioner for Workmen's Compensation in the discharge of his duties under the Workmen's Compensation Act, 1923 (VIII of 1923)—*Published in G. of India, Part I, page 421.*

*Published in the Gazette of India, January 16, 1926 Part I,
Pages 130-131.*

Notification dated 11th January 1926.

No. 41-I.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, the Governor-General in Council is pleased to direct that the following further amendment shall be made in the First Schedule to the notification of the Government of India in the Finance Department, No. 2365-B, dated 14th November, 1912, namely :—

In entry No. 30 relating to the Indian Stamp Act, 1899 (II of 1899), in the third column after modification No. (3), the following modification shall be inserted namely :—

(4) After Section 75 the following section shall be inserted, namely —

“75-A. Notwithstanding anything contained in this Act, the Governor-General in Council may, by notification in the Gazette of India, apply to any of the areas to which this Act has been applied, any rules under section 75 of the Indian Stamp Act, 1899, which are for the time being in force in British India, subject to any amendments to which such rules are for the time being subject in British India and with such modifications as may be specified in the notification and any rules so applied shall have effect in the said places as if made under this Act.”

No. 41-I. In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and if all other powers enabling him in that behalf, the Governor-General in Council is pleased to direct that the following further amendments shall be made in the First Schedule to the Notification of the Government of India in the Foreign Department, No. 262 I. B., dated the 10th February 1913, applying certain enactments to railway lands specified in Notification No. 261—I. B., dated 10th February 1913 namely :—

In entry No. 22 in the Second column, after modification No. (3) the following modification shall be inserted, namely :—

(4) After section 75, the following section shall be inserted, namely :—

“75-A. Notwithstanding anything contained in this Act, the Governor-General in Council may, by notification in the Gazette of India, apply to the railway lands in Central India over which the Governor-General in Council exercises jurisdiction any rules under section 75 of the Indian Stamp Act, 1899, which are for the time being in force in British India, subject to any amendments to which such rules are for the time being subject in British India with such modifications, as may be specified, in the notification, and any rules so applied shall have effect in the said railway lands as if made under this Act.”

No. 42-I.—In exercise of the powers conferred by the Indian Stamp Act, 1899 (II of 1899) as applied :—

(a) to the Cantonments of Mhow, Neemuch, Nowgong and Sehore, the Indore Residency Bazaars and the Civil Lines of Nowgong ; and

(b) to the Railway Lands in Central India over which the Governor-General exercises jurisdiction, and in the supercession of the notification of the Government of India in the Foreign and Political Department, No. 707-I. B., dated the 2nd May 1913, the Governor-General in Council is pleased to apply to the places and lands specified above the rules under the Indian Stamp Act, 1899, published with the Finance Department, No. C-63 Stamps 25, dated the 5th May 1925 ; subject to any amendments and which the said rules may be subject in British India and subject also to the modification specified thereunder and to such further modification, not affecting the substance, as may be necessary or proper to adopt in the said places and lands :—

(1) For rule 2, clause (d), the following shall be substituted, namely :—

(d) Superintendent of Stamps means the Superintendent of Stamps, Nagpore.

(2) In clause (b) sub-rule (1) of rule (4) for the words “a Superintendent” the words “the Superintendent” shall be substituted.

(3) In rule 8 for the words and figures "articles 5, 19, 36, 37, 49 and 52" shall be substituted the words and figures "articles 19, 36, 37, 43, 49 and 52."

(4) For rule (9), the following shall be substituted, namely :—

9. "The Superintendent of Stamps, Nagpur, is The Proper Officer", empowered to affix and impress labels and shall be the 'Proper Officer' for the purposes of the Act and of these rules.

5. The following shall be omitted, namely :—

(a) Sub-rule (3) of Rule II.

(b) Sub-rule (2) of rule 12. the words 'unless he is himself the proper officer.

(c) Rule 15.

(d) Clause (c) of rule 17, and

(e) Appendix I.

ACT NO. I OF 1879.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO STAMPS.

*(Received the assent of His Excellency the Governor-General on
the 17th January 1879.)*

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Stamp Act, 1879 :—"

Local extent. It extends to the whole of British India ;

Commencement. And it shall come into force on the first day of April, 1879.

2. On and after that day, the Acts specified in the third schedule shall be repealed to, the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation clause. 3. In this Act, unless there is something repugnant in the subject or context,—

"Banker."

(1) ["Banker" includes a bank and any person acting as a banker :]

"Bill of exchange."

(2) "Bill of exchange" includes a hundi :

(3) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt

"Bill of lading." of goods therein described and undertaking to deliver the same at a place and to a person therein mentioned or indicated :

(4) "Bond" means—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

"Bond."

[(b) any instrument *attested* by a witness and *not payable to order or bearer*, whereby a person obliges himself to pay money to another; and

(c) any instrument *so attested* whereby a person obliges himself to deliver grain or other agricultural produce to another :]

(5) ["Chargeable" mean , as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed, or, where several persons execute the instrument at different times, first executed :]

(6) "Cheque" means a bill of exchange drawn on a banker and payable on demand :

(7) ["Chief Controlling Revenue Authority" means in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant Governors of Bengal and the North-Western Provinces, [and the Chief Commissioner of Oudh], the Board of Revenue : in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner : in Sind, the Commissioner : in the Punjab [and Burma], the Financial Commissioner ; and elsewhere, the Local Government or such officer, as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :]

(8) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :

(9) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale :

(10) ["Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed :]

(11) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue authority.

(12) "Lease" means a lease of immoveable property and includes also.

(a) a patta,

(b) kabuliyat or other undertaking in writing, *not being a counterpart of a lease, to cultivate, occupy or pay or [deliver] rent for, immoveable property* ;

(c) [any instrument by which tolls of any description are let, and

(d) any writing on an application for a lease intended to signify that the application is granted :]

(13) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money [advanced, or to

"Mortgage-deeds." be advanced, by way of loan, or an existing or future debt, or the performance of an engagement,] one person transfers, or creates, to or in favour of another, a right over [specified] property :

(14) "Paper" includes vellum, parchment, or any other material on which an instrument may be written :

(15) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damages or liability arising from an unknown or contingent event :

"Policy of insurance."

[It includes a life-policy, and includes, also any writing evidencing the renewal of, for the purpose of keeping in force, a policy of fire-insurance in respect of which, and of the previous renewal whereof (if any), there has not already been paid the stamp duty which would have been chargeable if the policy had originally been granted for a longer term than six months (as amended)].

[It includes also a policy of sea-insurance, such a policy (a) meaning any insurance made upon any ship or vessel, or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and (b) including any insurance of goods, merchandise or property for any transit which includes not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.]

And where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage such agreement or engagement shall be deemed to be a contract for sea-insurance. (inserted by Act VI of 1894).

(16) "Power-of-attorney" means any instrument [not chargeable with a fee under the law relating to Court-fees for the time being in force] empowering a [specified person] to act in the stead of the person executing it :

"Power-of-attorney."

(17) ["Receipt" means any note, memorandum, writing or advertisement whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, *whether the same is or is not signed with the name of any person.*]

"Schedule."

(18) "Schedule" means a schedule to this Act annexed :

(19) "Settlement" means any *non-testamentary* disposition in writing, of moveable or immoveable property, made—

"Settlement."

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(c) for any religious or charitable purpose :

[It includes an *agreement* in writing to make such a disposition :]

"Vessel."

(20) ["Vessel" means anything made for the conveyance by water of human beings or property :]

"Written," and "writing."

(21) ["Written" and "writing" include every mode in which words or figures can be expressed upon paper.]

Schedules to be read as part of Act.

4. [The schedules and everything therein contained shall be read and construed as part of this Act.]

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to duty.

5. [Subject to the exemptions contained in the Second schedule,] the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say :—

(a) every instrument mentioned in the first schedule, and which, [not having been *previously* executed by any person,] is executed in British India on or after the first day of April, 1879 ;

(b) [every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid,

or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India ;] and

(c) every instrument, (*other than* a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, [not having been *previously* executed by any person,] is executed out of British India on or after that day, relates to any property situate, [or to any matter or thing done or to be done,] in British India, [and is received in British India.]

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the *principal* instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties ; [but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.]

[Sec. 7A inserted by Act VI 1891 and Sec. 7B inserted by Act XIII of 1897 omitted.]

8. The Governor-General in Council may, by order published in the *Gazette of India*.

(a) reduce or remit, [whether prospectively or retrospectively,] in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

9. [Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or,

(b) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

The rules made under this section may, among other matters regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.]

10. The following instruments may be stamped with adhesive stamps, namely :—

(a) instruments chargeable with the duty of *one anna* [except parts of bills of exchange payable otherwise than on demand and drawn in sets ;]

(b) bills of exchange, [cheques] and promissory notes drawn or made out of British India ;

[(c) entry as an advocate, vakil or attorney on the roll of a High Court

(d) notarial acts ;] and

(e) transfers by *endorsement* of shares of public companies and associations.

11. Whoever affixes any adhesive stamp to any instrument [chargeable with duty] and which has been executed by any person, shall, *when affixing such stamp*, cancel the same so that it cannot be used again,

Cancellation of adhesive stamps.

[and whoever executes any instrument on any paper bearing an adhesive stamp shall, *at the time of execution*, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.]

12. [Every instrument written upon paper stamped with an impressed stamp shall be written in such manner, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.]

How instruments stamped with *impressed* stamps are to be written.

13. [No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written : *provided* that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods, the payment or delivery of which is secured thereby.]

Only one instrument to be on same stamp.

Instrument written contrary to s. 12 or 13 deemed unstamped.

14. [Every instrument written in contravention of section twelve or thirteen, shall be deemed to be unstamped.]

15. [Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first mentioned instrument in such manner as the Governor-General in Council may by rule prescribe.]

Denoting duty.

C.—Of the Time of Stamping Instruments.

16. [All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.]

Instruments executed in British India.

17. Every instrument chargeable with duty executed *only* out of British India, and *not being* a bill of exchange, cheque or promissory note, may be stamped within three months after it has been *first* received in British India : or, where such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques and notes executed out of British India.

18. The [first] holder (in British India) of any bill of exchange, cheque, or promissory note drawn or made out of British India, shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same [in British India,] affix thereto the proper stamp and cancel the same :

Bills cheques and notes drawn out of British India.

[Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.]

D.—Of Valuation for duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, Conversion of amount expressed in certain currencies. such duty shall be calculated on the value of such money in the currency of British India according to the following scale :—

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

20. [Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of instrument.] Conversion of amount expressed in other foreign currencies.

21. [Where an instrument is chargeable with *ad valorem* duty in respect of any stock or any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.] Stock and makerable securities how to be valued.

22. [When an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed until the contrary is proved, to be duly stamped.] Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein. Instruments reserving interest.

24. Where any property is transferred to any person [in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not,] such debt, money, or stock is to be deemed the whole or part, as the case may

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically

Valuation in case of annuity, &c.

or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall for the purpose of this Act, be deemed to be—

[(a) where the sum is payable for *definite* period so that the total amount to be paid can be *previously ascertained*—such total amount ;]

(b) where the sum is payable [in perpetuity] or for an indefinite time [not terminable with any life in being at the date of such instrument or conveyance]—the total amount which, according to the terms of such instrument or conveyance will or may be payable during the period of *twenty years next after* the date of such instrument or conveyance ; and

(c) where the sum is payable for an indefinite time [*terminable* with any life in being at the date of such instrument or conveyance]—the total amount which will or may be payable as aforesaid during the period of *twelve years next after* the date of such instrument or conveyance.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty

Stamp where value of subject-matter is indeterminate.

cannot be, [or (in the case of an instrument executed before this Act comes into force) could not have been,] ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument

more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, [at the date of such execution,] have been sufficient.

27. The consideration (if any) [and all other facts and circumstances affecting the chargeability of any

Facts affecting duty to be set forth in instrument.

instrument with duty, or the amount of duty with which it is chargeable,] shall *fully and truly* set forth therein.

28. [(a) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by

Direction as to duty in case of certain conveniences.

different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration

for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b) Whereby property contracted to be *purchased* for one consideration for the whole, by two or more persons jointly, or by any person for himself or others, or wholly for others, is conveyed in parts by *separate* instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(c) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts, to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(d) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee.

(e) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller ; or, where such duty would exceed five rupees, with a duty of five rupees.]

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—
 Duties by whom payable—

(a) in the case of any instrument described in numbers [2, 11,] 13, 14, 15, 24, 28, [29,] 30, 44, [53, 54,] 55, 57 and 60 (a) and (b) of the first schedule—by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance—by the insured :

(e) in the case of a conveyance—by the grantee : in the case of a lease [or agreement to lease]—by the lessee [or intended lessee:]

(d) in the case of a counterpart of a lease—by the lessor :

(e) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, [or, when the partition is made in execution of an order passed by a Revenue authority, in such proportion as such authority directs:]

(f) in the case of an instrument of exchange—by the parties in equal shares : and

[(g) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.]

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, [whether executed or not,] and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable :

[and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application untill such abstract and evidence have been furnished accordingly :

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceedings, except in an enquiry as to the duty with which the instrument to which it relates is chargeable ; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.]

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

[When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.]

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be : and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Nothing in this section shall authorize the Collector to endorse—

[any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution (as the case may be) ;

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India ;] or

any instrument chargeable with the duty of *one anna* or, *any bill of exchange or promissory note*, when brought to him after the drawing or execution thereof on paper not duly stamped.

32. [Every payment of a fee under section thirty shall be made Payment of fees under in stamps, or cash, as the Governor-General section 30 how made. in Council may by rule direct.]

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. [Every person having by law or consent of parties authority Examination and im- to receive evidence, and pound- of instru- ments.

every person in charge of a public office except an officer of Police, before whom any instrument chargeable, in his opinion, with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and des-

cription required whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed.

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act : [chapter XII or chapter XXXVI, of the Code of Criminal Procedure, 1882]

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.]

34. No Instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Instruments not duly stamped inadmissible in evidence, &c.

having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such

Provided that—

1st, any such instrument, *not being* an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, [subject to all just exceptions,] be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

Instruments admissible on payment of duty and penalty.

or promissory note, shall, [subject to all just exceptions,] be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument

insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under chapter forty [or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act.] [chapter XII or chapter XXXVI of the Code of criminal Procedure, 1882]

and in certain criminal proceedings.

under chapter forty [or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act.]

3rd. [When an instrument has been admitted in evidence, such admission shall not, *except* as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.]

Admission of instrument not to be questioned.

admission shall not, *except* as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.]

35. [When the person impounding an instrument under section thirty-three has by law or consent or parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an *authenticated copy* of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.]

Instruments impounded how dealt with,

In every other case, the person so impounding an instrument shall send it in *original* to the Collector.

36. [When a copy of an instrument is sent to Collector under the first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, *refund* any portion of the penalty in excess of five rupees which has been paid in respect of such instrument or

Collector's power to refund penalty paid under section 34, 1st para.

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.]

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure:—

Collector's power to stamp instruments impounded.

(a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall [upon application made to him in this behalf] deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, [or as such person may direct.]

(b) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

[Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, *remit* the whole penalty prescribed by this section.]

Every certificate under clause (a) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of *one anna* or to a bill of *exchange* or *promissory note*.

38. If any instrument chargeable with duty and which is not duly stamped, is produced by any person of his *own motion* before the Collector within *one year* from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such

Instrument unduly stamped by accident.

instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by *accident, mistake or urgent necessity*, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of *one anna* only or to a bill of *exchange* or *promissory note*.

39. When the duty and penalty (if any) leviable in respect of any instrument has been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty [stating

Endorsement of instruments on which duty has been paid under sections 34, 37 or 38.

the amount of each] have been levied in respect thereof, [and the name and residence of the person paying them.]

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, [and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:]

[Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary, and has not cancelled such certificate:]

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.]

40. [The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution

Prosecution for offence against stamp-law.

of any person who appears to have committed an offence against the stamp-law in respect of such instrument:]

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an

Proviso.

intention of evading payment of the proper duty.]

41. [When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person

Persons paying duty or penalty may recover same in certain cases.

was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid : and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be *conclusive evidence* of the matters therein certified.]

42. When any penalty is paid under section thirty-four or thirty-seven, the Chief Controlling Revenue

Remission of penalty paid under section 34 or 37.

Authority may, upon application [in writing made within one year from the date of the payment] refund such penalty wholly or in part.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instrument sent under section 35.

- [When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.]

Copy may be made of instrument so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner herein-before provided, may pay the sum payable upon such bill, note or cheque, and may charge

Power of payee to stamp bills, notes and cheques received by him unstamped.

the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. [If any Collector acting under section thirty, section thirty-seven or section thirty-eight feels doubt as to the *amount* of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority, and

Procedure where Collector feels doubt as to duty chargeable.

such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.]

46. The Chief Controlling Revenue Authority may state any case referred to it under section forty-five, or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort

Reference by Revenue Authority to High Court.

Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be: [if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces; if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab—to the Chief Court of the Punjab: if it arises in the Central Provinces—to the High Court of Judicature at Bombay;] and if it arises in any other part of British India to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of divergence the opinion of the majority shall prevail.

47. If the High Court [or Chief Court] is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto

Power of Court to call for further particulars.

or alteration therein as the Court may direct in that behalf.

48. The High Court [or Chief Court,] upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgement thereon containing the grounds on which such decision is founded: and it shall send

Procedure in disposing of reference.

to the Revenue Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving such copy dispose of the case conformably to such judgment.

49. [If any court *other than* a Court mentioned in section forty-six feels doubt as to the *amount* of duty to be paid in respect of any instrument *under the first proviso to section thirty-four*, the

Reference by other Courts to High Court.

Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court shall be made through the Court immediately superior.]

50. [When any Court in the exercise of *civil or revenue* jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the

Revision of certain decisions of Courts regarding the sufficiency of stamps.

application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such court, shall also send him such instrument; and thereupon the Collector may, notwithstanding any thing contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such Court, was payable in respect of the instrument under section thirty-four, is paid to the Collector, unless he thinks that the offence was committed with an *intention of evading* payment of the proper duty:

Provided also that except for the purpose of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.]

CHAPTER VI.

ALLOWANCE FOR SPOILED STAMPS AND STAMPS NO LONGER ENQUIRED.

51. Subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for *impressed stamps spoiled* in the cases hereinafter mentioned, namely :—

Allowance for *spoiled stamps*.

(a) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person :

(b) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf on the drawer or intended drawer, but not delivered out of his hand to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, [and provided that the paper on which any such stamp is impressed does not, bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon :]

(c) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, [provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note :]

(d) The stamp used for any of the following instruments, that, is to say :—

(1) [an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law *from the beginning* :]

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :

(3) an instrument executed by any party thereto but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, [or to advance any money intended to be thereby secured,] cannot be completed so as to effect the intended transaction in the form proposed :

(4) [an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :]

(5) an instrument executed by any party thereto which, [by reason of the refusal of any person to act under the same,] or by the refusal [or non-acceptance] of any office thereby granted, totally fails of the intended purpose :

(6) an instrument executed by any party thereto which becomes *useless* in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped :

(7) an instrument executed by any party thereto which is inadvertently and undesignedly *spoiled* and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that in the case of an *executed* instrument—

(a) such instrument is given up to be cancelled :

(b) the application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, [except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period; and in that case within six months after the date of execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :]

Provided also that, in the case of stamped paper *not having any executed instrument written thereon*, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. [When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provisions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.]

Allowance for *misused* stamps.

53. In any case in which allowance is made for spoiled or mis-used stamps, the Collector may give in lieu thereof (a) other stamps of the same description and value, or, (b) if required, and he thinks fit stamps of any other description to the same amount in value, or, (c) at his discretion, the same value in money, [deducting one anna for each rupee or fraction of a rupee.]

Allowance under sections 51 and 52 how to be made.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bona fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date.

Allowance for stamps not required for use.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor-General in Council, may make rules consistent herewith for regulating the [supply] and sale of stamps and stamped papers, the person by whom alone such sale is to be conducted, and the [duties] and remuneration of such persons.

Powers to make rules relating to sale of stamps.

Powers to make rules generally to carry out Act.

56. [The Governor-General in Council may make rules consistent herewith to carry out generally the purposes of the Act.]

Certain powers exercisable from time to time.

57. [All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.]

All rules made under this Act other than rules made under section fifty-five shall be published in the (*Gazette of India*), and all rules made under section fifty-five shall be published in the local *Gazette*. All rules published as required by this section shall, upon such publication, have the force of law.

Publication of rules.

58. Any person receiving any money exceeding twenty rupees in amount or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall on demand by

Obligation to give receipt in certain cases.

the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.
 Saving as to Court-fees.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas*per copy.
 Act to be translated, indexed and sold cheaply.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing or transferring, or signing [otherwise than as a witness,] or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,
 Penalty for executing &c., instrument not duly stamped.

any person executing or signing *otherwise than as a witness* any other instrument chargeable with duty without the same being duly stamped, and

[any person voting or attempting to vote under any proxy not duly stamped,]

shall for every such offence be punished with fine which may extend to five hundred rupees :

[Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.]

62. Any person required by section eleven to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section shall be punished with fine which may extend to one hundred rupees.
 Penalty for failure to cancel adhesive stamp.

Penalty for omission to comply with provision of section 27.

63. Any person who, [with intent to defraud the Government of any duty,]—

(a) executes any instrument in which all the fact and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, *neglects or omits*, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person, who being required under section fifty-eight to give a receipt, refuses [or neglects] to give the same, [or who, *with intent to defraud* the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,] shall be punished with the fine which may extend to one hundred rupees.

65. [Every person who—
(a) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

(b) makes, executes or delivers out any policy which is not duly stamped or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees.]

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

67. [Whoever, *with intent to defraud* the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, *knowing* that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment or, accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

and whoever, with the like intent, practices or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force, for other devices to defraud the revenue.

shall be punished with fine which may extend to one thousand rupees.]

68. Any person appointed to sell stamps who disobeys any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. No prosecution in respect of any offence punishable under [this Act,] or the General Stamp Act, 1869, [or any Act thereby repealed,] shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

[The Chief Controlling Revenue Authority, or any officer authorised by it in this behalf, may stay any such prosecution or compound any such offence.]

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

71. [Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.]

Place of trial.

72. [Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it :]

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.]

SCHEDULE I

Description of Instrument.	Proper Stamp-duty.
1. AKNOWLEDGMENT of a debt <i>exceeding</i> twenty rupees in amount [or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt] in any book [(other than a banker's pass-book)] or on a separate piece of paper, [when such book or paper is left in the creditor's possession] ...	One anna.
2. ADMINISTRATION-BOND including a bond given under s. 256 of the Indian succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act 1889 (<i>as amended</i>) ...	The same duty as a security-Bond (No. 14.)
ADOPTION-DEED ...	
<i>See Instrument No. 38</i>	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath ...	One rupee.
<i>See Exemptions, Schedule II (No. 1).</i>	
4. AGREEMENT TO LEASE ...	The same duty as a Lease (No. 39.)
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT.	
(a) If relating to the sale of any Government security, share in a Company or Association, or Bill of Exchange ...	One anna.
(b) Whereby the owner or occupier of land in a village of the Bombay Presidency agrees to relinquish his rights therein to the Government and to accept rights in other land in exchange for the right so relinquished ...	Four annas.
(c) If not otherwise provided for by this Act ...	Eight annas.
<i>See Exemptions, Schedule II (No. 2).</i>	
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, were made by any writing <i>not being a Will</i>	Fifteen rupees.

Description of Instruments.	Proper Stamp-duty.
<p>7. APPRAISEMENT or valuation [made otherwise than under an order of the Court in the course of a suit]</p>	<p>The same duty as an award (No 10).</p>
<p><i>See Exemptions, Schedule II (Nos. 3 and 4).</i></p>	
<p>APPRENTICESHIP-DEED. <i>See Instrument, No. 31.</i></p>	
<p>8. ARTICLES OF ASSOCIATION OF A COMPANY ...</p>	<p>Twenty-five rupees.</p>
<p>9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court ...</p>	<p>Two hundred and fifty rupees.</p>
<p>ASSIGNMENT.</p>	
<p><i>See Conveyance, No. 21 and Transfer No. 60.</i></p>	
<p>AUTHORITY TO ADOPT. <i>See Instrument, No. 38.</i></p>	
<p>10. AWARD, that is to say, any decision in writing by an arbitrator or umpire [on a reference made otherwise than by an order of the Court in the course of a suit.]</p>	
<p>(a) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000</p>	<p>The same duty as a Bond (No. 13) for such amount.</p>
<p>(b) In any other case ...</p>	
<p><i>See Exemption, Schedule II (No. 6).</i></p>	<p>Five rupees.</p>
<p>11. BILL OF <i>Exchange</i> OR PROMISSORY NOTE, [not being a cheque, bond, bank-note or currency-note]</p>	
<p>(a) When payable <i>on demand</i> and the amount exceeds Rs. 20 ..</p>	<p>One anna.</p>

Description of Instrument.	Proper Stamp-duty.
(b) When payable <i>otherwise than on demand</i> , [but not more than one year after date or sight.]	<div> <div>If drawn singly</div> <div>If drawn in set of two, for each part of the set</div> <div>If drawn in set of three, for each part of the set</div> </div>
If the amount of the bill or note does not exceed Rs. 200	<div>Rs. A. P.</div> <div>0 2 0 0 1 0 0 1 0</div>
" 200 and does not exceed Rs. 400	0 4 0 0 2 0 0 2 0
" 400 " " 600	0 6 0 0 3 0 0 2 0
" 600 " " 1,000	0 10 0 0 5 0 0 4 0
" 1,000 " " 1,200	0 12 0 0 6 0 0 4 0
" 1,200 " " 1,600	1 0 0 0 8 0 0 6 0
" 1,600 " " 2,500	1 8 0 0 12 0 0 8 0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000	1 8 0 0 12 0 0 8 0
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000	3 0 0 1 8 0 1 0 0
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ...	6 0 0 3 0 0 2 0 0
(c) [When payable at more than one year after date or sight].	The same duty as a bond (No. 13) for the amount of such bill or note.
12. BILL OF LADING ... <i>See Exemption, Schedule II (No. 7).</i>	Four annas. If a Bill of Lading is drawn <i>in parts</i> , the proper stamp therefor must be borne by <i>each</i> one of the set.
13. BOND (not otherwise provided for by this Act or by the Court Fees Act, 1870) ...	
When the amount or value secured does not exceed Rs. 10 ...	Two annas.
When such amount or value exceeds Rs. 10, but does not exceed Rs. 50 ...	Four annas.
When such amount or value exceeds Rs. 50, but does not exceed Rs. 100 ...	Eight annas.

• Description of Instrument.	Proper Stamp-duty.
<p>and for every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000</p> <p>and for every Rs. 500 or part thereof in excess of Rs. 1,000</p> <p><i>See Exemptions, Schedule II (Nos. 8).</i> <i>See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14).</i></p>	<p>Eight annas.</p> <p>Two rupees eight annas.</p>
<p>14. BOND OR MORTGAGE-DEED [executed by way of security] for the due execution of an office, or to account for money received by virtue thereof.</p> <p>(a) When the amount secured does not exceed Rs. 1,000</p> <p>(b) In any other case</p> <p><i>See Exemptions, Schedule II (Nos. 8 and 12).</i></p>	<p>The same duty as a Bond (No. 13).</p> <p>Five rupees.</p>
<p>15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to [preserve the ship] or prosecute her voyage</p>	<p>The same duty as a Bond (No. 13).</p>
<p>16. [CERTIFICATE OF SALE, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer]</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money (only.)</p>
<p>17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association</p>	<p>One anna.</p>
<p>18. CHARTER-PARTY, that is to say, any instrument (<i>except</i> an agreement for the hire of a tug-steamer) whereby a vessel or some specified</p>	

Description of Instrument.	Proper Stamp-duty.
principal part thereof is let for the specified purpose of the charterer.	One rupee.
19. CHEQUE, for an amount exceeding twenty rupees.	One anna.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license, for the benefit of his creditors.	Ten rupees.
21. CONVEYANCE, [<i>not being a TRANSFER mentioned in No. 60.</i>]	
When the amount of the consideration for such conveyance as set forth therein does not exceed Rs. 50.	Eight annas.
When it exceeds Rs. 50 but does not exceed Rs. 100.	One rupee.
For every Rs. 100 or part thereof, in excess of Rs. 100 up to Rs. 1,000.	One rupee.
And for every Rs. 500 or part thereof in excess of Rs. 1,000.	Five rupees.
<i>See Exemptions, Schedule II, (Nos. 4 and 17).</i>	
CO-PARTNERSHIP, See <i>Instrument, No. 32.</i>	
22. COPY OR EXTRACT, certified to be a true copy or extract, [by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees].	
(a) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee.	Eight annas.
(b) In any other case.	One rupee.

Description of Instrument.	Proper Stamp-duty.
<i>See Exemptions, Schedule II (Nos. 9 and 10).</i>	•
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid.	The same duty as is payable on the original.
(a) If the duty with which the original instrument is chargeable does not exceed one rupee.	One rupee.
(b) In any other case.	The same duty as a Security-Bond (No. 14).
24. CUSTOMS-BOND.	Fifteen rupees.
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will.	One anna.
26. DELIVERY ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.	DEPOSIT OF TITLE-DEEDS, <i>See Instrument, No. 29.</i> DISSOLUTION OF PARTNERSHIP. <i>See Instrument, No. 33.</i> DUPLICATE, <i>See Instrument, No. 23.</i>
27. [ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent "or by the Legal Practitioner's Act, 1884."	Five hundred rupees.
In the case of an Advocate or Vakil.	Two hundred and fifty rupees.]
In the case of an Attorney.	

Description of Instrument.	Proper Stamp-duty.
<p><i>See Exemption, Schedule II (No. 11)</i> EXCHANGE, <i>See Instrument, No. 35.</i> EXTRACT, <i>See Instrument, No. 22.</i> FURTHER CHARGE, <i>See Instrument No. 30.</i></p>	
<p>GIFT, <i>See Instrument, No. 36.</i></p>	
<p>28. INDEMNITY-BOND. ... INSPECTORSHIP-DEED. <i>See Composition-deed, No. 20.</i></p>	<p>The same duty as a Security-Bond (No. 14).</p>
<p>29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, [or upon the hypothecation of moveable property].</p> <p>(a) [When such loan is repayable more than three months, but not more than one year, from the date of such instrument.]</p> <p>(b) When such loan is repayable not more than three months from the date of such instrument.</p>	<p>The same duty as a Bill of Exchange (No. 11 (b)) for the amount secured.</p> <p>Half the duty payable on a Bill of Exchange [No. 11 (b)] for the amount secured.</p>
<p>30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY.</p> <p>(a) When the original mortgage is one of the description referred to in No. 54, clause (a), of this schedule.</p> <p>(b) When such mortgage is one of the description referred to in No. 44, clause (b), of this schedule.</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.</p> <p>The same duty as a Bond (No. 13) for the amount secured by such instrument.</p>
<p>31. [INSTRUMENT OF APPRENTICESHIP including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, <i>except</i> articles of clerkship (No. 9 of this schedule).</p>	<p>Five rupees.</p>

Description of Instrument.	Proper Stamp-duty
<i>See exemption, Schedule II [No. 12 (c)].</i>	
32. INSTRUMENT OR CO-PARTNERSHIP.	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP.	Five rupees.
34. [INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage.	One rupee.]
35. INSTRUMENT OF EXCHANGE of any property.	The same duty as a conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT [OTHER THAN A SETTLEMENT OR WILL].	The same duty as a conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION.	The same duty as a Bond (No. 13) for a consideration equal to the value of the property divided as set forth in such instrument.
38. INSTRUMENT [(OTHER THAN A WILL) CONFERRING OR] PURPORTING TO CONFER AN AUTHORITY TO ADOPT.	Ten rupees.]
INSURANCE.	
<i>See Policy No. 49.</i>	
39. LEASE.(including an underlease or sub-lease—1897).	
(a) Whereby such lease the rent is fixed and no premium is paid [or delivered] and such lease purports to be for a term—	
of less than one year.	The same duty as a Bond (No. 13) for the whole amount payable [or deliverable] under such lease.
of not less than one year, but not more than three years.	The same duty as a Bond (No. 13) for the average annual rent reserved.

Description of Instrument.	Proper Stamp-duty.
exceeding three years	The same duty as a Conveyance (No. 21) for a consideration equal to the amount [or value of the average annual rent reserved.]
(b) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount [or value of the average annual rent] which would be paid or delivered for the <i>first ten</i> years if the lease continued so long.
(c) Where the lease is granted for a fine or premium, and where no rent is reserved.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium [as set forth in the lease.]
(d) Where the lease is granted for a fine or premium in addition to rent reserved.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium [as set forth in the lease.] <i>in addition</i> to the duty which would have been payable on such lease if no fine or premium had been paid [or delivered:]
<p><i>See Agreement to lease (No. 4).</i></p> <p><i>See Exemptions, Schedule II (No. 13).</i></p>	<p>[<i>Provided that, when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</i>]</p>

Description of Instrument.	Proper Stamp-duty.
40. [LETTER OF ALLOTMENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company.	One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn.	One anna.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY.	Fifteen rupees.
44. MORTGAGE-DEED <i>not provided for</i> by No. 14, No. 15, No. 29 or No. 55 of this schedule —	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
(a) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor [or agreed to be given.]	The same duty as a Bond (No. 13) for the amount secured by such deed.
(b) When at the time of execution possession is not given [or agreed to be given as aforesaid.]	
<i>See Exemptions, Schedule II, No. 12 and No. 14 (b).</i>	
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.	One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security <i>exceeding in value twenty rupees.</i>	One anna.

Description of Instrument.	Proper Stamp-duty.												
<p>47. NOTE OF PROTEST BY THE MASTER OF A SHIP.</p> <p>PARTITION. See <i>Instrument No. 37.</i></p> <p>PARTNERSHIP. See <i>Instrument Nos. 32 and 33.</i></p>	<p>Eight annas.</p>												
<p>48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India.</p> <p>(<i>Repealed by Act V of 1888.</i>)</p>	<p>One hundred rupees.</p>												
<p>49. POLICY OF INSURANCE.</p> <p>(a) In the case of <i>sea-insurance</i>—</p> <p>when the amount insured does not exceed Rs. 1,000.</p> <p>And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000.</p> <p>(b) In the case of <i>any other insurance.</i></p> <p>When the amount insured does not exceed Rs. 1,000.</p> <p>And for every further sum of Rs. 1,000 or part thereof in excess of Rs. 1,000.</p> <p><i>but this article has been further amended by Act I of 1888 and Act VI of 1894.</i></p> <p>See <i>Exemption, Schedule II</i> [No. 14 (a)].</p>	<table> <tr> <th>If drawn singly.</th><th>If drawn in duplicate, for each part.</th></tr> <tr> <th>RS. A. P.</th><th>RS. A. P.</th></tr> <tr> <td>0 4 0</td><td>0 2 0</td></tr> <tr> <td>0 4 0</td><td>0 2 0</td></tr> <tr> <td>0 6 0</td><td>0 3 0</td></tr> <tr> <td>0 6 0</td><td>0 3 0</td></tr> </table>	If drawn singly.	If drawn in duplicate, for each part.	RS. A. P.	RS. A. P.	0 4 0	0 2 0	0 4 0	0 2 0	0 6 0	0 3 0	0 6 0	0 3 0
If drawn singly.	If drawn in duplicate, for each part.												
RS. A. P.	RS. A. P.												
0 4 0	0 2 0												
0 4 0	0 2 0												
0 6 0	0 3 0												
0 6 0	0 3 0												
<p>50. POWER-OF-ATTORNEY, [not being a proxy chargeable under No. 51].</p> <p>(a) When executed for the sole purpose of procuring the presentation of one or more documents for <i>registration</i> in relation to a <i>single</i> transaction.</p> <p>(b) When authorising one person or more to act in a <i>single</i> transaction other than that mentioned in (a)</p>	<p>Eight annas.</p> <p>One rupee.</p>												

Description of Instrument.	Proper Stamp-duty.
(c) [When authorizing <i>not more than five</i> persons to act jointly and severally in <i>more than one</i> transaction or generally.	Five rupees.
(d) When authorizing more than five but <i>not more than ten</i> persons to act jointly and severally in <i>more than one</i> transaction or generally.	Ten rupees.
(e) In any other case	One rupee for each person authorised.
<i>Explanation</i> —For the purposes of this number more persons than one when belonging to the same firm, shall be deemed to be one person.]	
PROMISSORY NOTE. See <i>Bill of Exchange, No. 11.</i>	
PROTEST, [that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill See <i>Notarial Act, No. 45.</i>	
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading ship, [when such declarations is attested or certified by a Notary Public or other person lawfully acting as such.] See <i>Notarial, Act, No. 45.</i>	
51. PROXY empowering any person to vote at any <i>one</i> meeting of—	
(a) Members of a Company whose stock or funds is or are divided into shares and transferable. ...	} One anna.
(b) Municipal Commissioners. ...	
(c) Proprietors, Members or Contributors to the funds of any Institution	

Description of Instrument.	Proper Stamp-duty.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES.	One anna.
<i>See Exemptions, Schedule II (No. 15).</i>	
53. RE-CONVEYANCE OF MORTGAGED PROPERTY—	
(a) If the consideration for which the property was mortgaged does not exceed Rs. 1,000	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.
(b) In any other case.	Ten rupees.
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property—	
(a) If the amount or value of the claim does not exceed Rs. 1,000.	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
(b) In any other case	Five rupees.
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 13).
56. [REVOCATION OF ANY TRUST of or concerning any property by any instrument <i>other than</i> a will.	Ten rupees.]
57. SETTLEMENT	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel.	One anna.
SPECIFICATION..... <i>See Petition, No. 48.</i>	

Description of Instrument.	Proper Stamp-duty.
59. SURRENDER OF LEASE.	
(a) When the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
(b) In any other case ...	Five rupees.
<i>See Exemption, Schedule II (No. 16).</i>	
60. TRANSFER.	
(a) Of shares in a Company or Association.	One-quarter of the duty payable on a Conveyance (No. 21.)
(b) Of any interest secured by a Bond, [Lease], Mortgage-deed or Policy of Insurance]—	
1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees.	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
2. In any other case ...	Five rupees.
(c) Of any property under the Administrator-General's Act, 1874, section 31.	Ten Rupees.
(d) Of any trust-property from one trustee to another trustee without consideration.	Five Rupees.
60A. Transfer of lease—by way of assignment, and not by way of underlease—1897.	The same duty as a Conveyance (No. 21.)
<i>See Exemptions, Schedule II (No. 17).</i>	
TRUST.	
<i>See Declaration, No. 25, Revocation, No. 56.</i>	
VALUATION.	
<i>See Appraisement, No. 7.</i>	
61. WARRANT FOR GOODS. that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, ware-house or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY

1. Affidavit [or declaration in writing] when made—
 - (a) [as a condition of enlistment under the Indian Articles of War ;
 - (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ;] or
 - (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
 - (a) for or relating to the sale of goods or merchandize [exclusively not being a note or memorandum chargeable under No. 46 of schedule I ;]
 - (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner. (*Repealed by Act XII of 1891*).
 - (c) made by raiyats for the cultivation of the poppy for Government ;
 - (d) made in the form of tenders to the Government of India for or relating to any loan ;
 - (e) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865 ; (*Repealed by Act XII of 1891*).
 - (f) made under the European Vagrancy Act, 1874, section 17.
3. [Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.]
4. [Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.]
5. [Assignment of copyright by entry made under Act No. XX of 1847, section 5.]
6. [Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.]
7. [Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889, and are to be delivered at another place within the limits of the same port.]
8. [Bond, when executed by
 - (a) the sureties of middlemen (lambardars or khattadars), taking advances for the cultivation of the poppy for Government ;

- (b) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act ;
- (c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem]
- 9. Copy of any paper which a public officer is [expressly] required by law to make or furnish [for record in any public office or for any public purpose.]
- 10. [Copy of registration of emigrants furnished under section 27 or section 20 of the Indian Emigration Act, 1871.] (*Repealed by Act XII of 1891*)
- 11. [Entry.—
 - (a) of an advocate, vakil or attorney on the roll of any High Court, when he has *previously* been enrolled in a High Court (*established by Royal Charter—repealed by Act IX of 1884*)
 - (b) on the roll of any High Court, as an attorney, of an articulated clerk bound as such before this Act comes into force. (*Repealed by Act XII of 1891*)
- 12. Instruments—
 - (a) [executed by persons taking advances under the Land Improvement Act, 1871, or where the Land Improvement Loans Act, 1883, is in force under that Act, or by their sureties, as security for repayment of such advances ;]
 - (b) [executed by officers of Government or their sureties] to secure the due execution of an office [or the due accounting for money received by virtue thereof ;]
 - (c) [of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.]
- 13. Leases and Counterparts—
 - (a) [leases of fisheries granted under the Burma Fisheries Act 1875 ;]
 - (b) lease, executed in the case of a *cultivator* without the payment or delivery of any fine or premium, [when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees ;
 - (c) counterpart of any lease granted to a cultivator.
- 14. Letter—
 - (a) of cover or engagement to issue a policy of insurance :
 Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available

for any purpose except to compel the delivery of the policy therein mentioned.

(b) of hypothecation accompanying a bill of exchange.

15. Receipt—

(a) endorsed on or contained in any instrument duly stamped, [or exempted under this schedule. No. 18.] acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured ;

(b) [for any payment of money without consideration]

(c) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of inam lands :

(d) [for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity ;]

(e) [for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ;]

(f) [given by holders of family-certificates in cases where the persons from whose pay or allowance the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;]

(g) [given by a headman or lambardar for land-revenue or taxes collected by him ;]

(h) given for money or securities for money deposited in the hands of any banker, to be accounted for :

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for ;

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease [when such lease is exempted from duty.]

17. Transfer by endorsement—

(a) of a bill of exchange, cheque or promissory note ;

(b) [of a bill of lading ;]

(c) of a policy of insurance ;

- (d) [of mortgages of rates and taxes authorized by any Act for the time being in force in British India ;
- (e) of securities of the Government of India ;
- (f) [of a warrant for goods No. 61 of schedule 1.]

General Exemption.

18. Any instrument executed by, or on behalf of, [or in favour of,] Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

Acts Repealed—omitted.

ACT NO. XVIII OF 1869.

*Received thq. Governor General's assent
on the 13th August, 1869.*

An Act for imposing Stamp Duties on certain Instruments.

CHAPTER I.—PRELIMINARY.

Short title.	1. This act may be called "The General Stamp Act, 1869.
Extent of Act.	It extends to the whole of British India.
Commencement of Act	And it shall come into force on the first day of January, 1870.

2. [*Repealed by Act No. XIV of 1870*]

Interpretation clause.	3. In this Act and the first and second schedules hereto annexed, unless there be something repugnant in the subject or context—
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(1) 'Affidavit' includes every declaration in writing, on oath or affirmation, made before a person authorized by law to administer an oath :

(2) 'Award' includes every decision in writing by an arbitrator or umpire :

(3) 'Bill of Exchange' includes a hundi and every other instrument (except a cheque) whereby a person is ordered to pay to another a specified sum of money :

(4) 'Bill of Lading' includes every instrument signed by the owner of a ship or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver them at a port and to a person therein mentioned or indicated :

(5) 'Bond' includes every instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified Act is performed, or is not performed, as the case may be :

(6) 'Bottomry-bond' includes every instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to prosecute her voyage :

(7) 'Charter-party' includes every instrument (except an agreement for the hire of a tug-steamers) whereby a ship or some principal part thereof is let for the specified purposes of the charterer :

(8) 'Cheque' includes every instrument whereby a bank, banker, or person acting as a banker is ordered to pay on demand a specified sum of money.

(9) 'Collector' means, within the limits of the towns of Calcutta, Madras and Bombay the Collector of Calcutta, Madras or Bombay, and, without those limits, the Collector of a District, and includes Deputy Commissioner or any officer having jurisdiction equivalent to that of a Collector of a District :

(10) 'Composition-deed' includes every instrument executed by a debtor, whereby the debtor conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license for the benefit of his creditors :

(11) 'Conveyance' means any instrument (except a transfer of a share in a company or association, a mortgage-deed, a settlement, a lease, an instrument of re-conveyance of mortgaged property, a composition deed, an instrument of gifts or an instrument of exchange or partition-deed, where no money is paid for equality of exchange or partition) by which property is conveyed *inter vivos* :

(12) 'Counterpart' means the duplicate of a conveyance, settlement, mortgage-deed or lease, such duplicate not being executed by the grantor, settlor, mortgagor or lessor, but by some other party to the instrument ; it includes a kabuliyat in cases where a lease has been granted :

(13) 'Dock-warrant' includes every instrument evidencing the title of any person therein named or his assign, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the company or person in whose custody such goods may be :

(14) 'Impressed' includes 'printed' and 'lithographed.'

(15) 'Lease' includes every instrument (not being a counterpart) by which one person lets or agrees to let, or takes or agrees to take, immoveable property to or from another :

(16) 'Letter of credit' includes every instrument by which one person requests another to give credit to the person in whose favour it is drawn :

(17) 'Letter of license' includes every agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion :

(18) 'mortgage-deed' includes every instrument evidencing a pledge of property for securing the payment of money :

(19) 'Negotiable instrument' includes bills of exchange, promissory notes and cheques :

(20) 'Notarial act' means any instrument endorsement, note or entry made or signed by a Notary Public in the execution of the duties of his office, and includes every like instrument, endorsement, note or entry made or signed by a consul, attorney, or other person authorized by law to act as a Notary public :

(21) 'Paper' includes vellum, parchment or any other material on which an instrument may be written :

(22) 'Partition-deed' means any instrument whereby persons interested in immoveable property jointly, or in common, or as coparceners, or as members of an undivided Hindu family, divide or agree to divide such property in severalty, and includes a batwara :

(23) 'Policy of insurance' means any instrument by which 'one person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event ; it does not include a policy on life :

(24) 'Power-of-attorney' includes every instrument (except a proxy) empowering a person to act in the stead of the person executing it :

(25) 'Promissory note' includes every instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight ;

(26) 'Property' means property being in British India ;

(27) 'Protest' means a declaration in writing made by a Notary Public, or other person authorized to act as such, attesting the dishonour of a bill of exchange or promissory note ;

(28) 'Protest of the master of a ship' includes every declaration of the particulars of her voyage, drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship ;

(29) 'Proxy' means an instrument whereby a person authorizes another to vote for him at a meeting ;

(30) 'Release' includes every instrument whereby a person renounces a claim upon another person or against any specified property ;

(31) 'Respondentia-bond' includes every instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination ; and

(32) 'Settlement' means any instrument (other than a will) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

CHAPTER II

STAMP-DUTIES CHARGEABLE UNDER THIS ACT

Schedule chargeable.	duties	4. For every instrument mentioned in the first and second schedules hereto, and executed in British India on or after the first day of January 1870,
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or executed out of British India on or after that day, but relating to any property within British India,

there shall be payable to the Government of India, as stamp-duty the amount indicated in the first or second schedule hereto annexed to be the proper duty for such instrument.

5. (a) All instruments chargeable under this Act with the duty of one anna, bills of exchange and promissory

Duties how levied. By adhesive stamps.	notes drawn or made out of British India, and transfers by endorsement of shares of companies and associations, may (subject to the provisions hereinafter contained) be stamped with adhesive stamps.
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(b) The stamp on every other instrument chargeable under this Act shall either be impressed on the paper whereon the instrument is written, or be otherwise denoted by the Collector or the Superintendent of Stamps in accordance with such rules as the Governor General of India in Council may from time to time prescribe in his behalf.

Duties by whom payable. 6. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

1st—In the case of any instrument mentioned in the first schedule to this Act (other than a policy of insurance, a mortgage-deed, a settlement, a conveyance, a lease, an instrument of exchange or partition-deed where money is paid for equality of exchange or partition, an appraisement or valuation, an award and a copy, duplicate or extract) by the person drawing, making, or executing such instrument ;

2nd—In the case of a policy of insurance by the insured ;

3rd—In the case of a settlement, by the settlor ;

4th—In the case of a conveyance, mortgage-deed or lease, by the grantee, mortgagor or lessee ;

5th—In the case of a counterpart of a lease, by the lessor ;

6th—In the case of a partition-deed, by the parties thereto, in proportion to their respective shares in the property comprised therein : and

7th—In the case of an exchange where money is paid for equality of exchange, by the person paying such money.

7. The duty imposed by this Act on bills of exchange shall be chargeable (a) on all bills drawn and payable in British India, (b) on all bills drawn in, but payable out of, British India, and (c) on all bills drawn out of, but accepted, or paid, or endorsed, transferred, or otherwise negotiated within British India.

8. The holder of any bill of exchange or promissory note drawn or made out of British India, and not stamped as required by this Act, shall, before he presents the same for acceptance or for payment, or endorses, transfers, or otherwise negotiates such bill or note, affix thereto the proper adhesive stamp or stamps for denoting the duty with which it is chargeable under this Act.

9. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with a duty higher than that with which it would have been chargeable had no mention of interest been made therein.

10. When the consideration set forth in or the amount secured by any instrument chargeable under this Act is expressed in pounds sterling, pounds currency francs or dollars such consideration or amount shall, for the purpose of this Act, be estimated according to the following scale :—

One pound sterling or pound ,currency is equivalent to ten rupees.
 One hundred francs are equivalent to forty rupees.
 One Mexican or China dollar is equivalent to two rupees four annas.
 One Mauritius dollar is equivalent to two rupees.

11. When the amount or value of the subject-matter of any bond, mortgage-deed, or settlement chargeable under this Act with an *ad valorem* stamp-duty and referred to or mentioned in section six cannot be ascertained, the proper stamp to be borne by such instrument may be determined by the person bound under that section to bear the expense of providing the stamp :

Optional stamps where value of subject-matter is indeterminate.

Provided that, under such instrument, nothing shall be recoverable more than the highest amount or value for which, if stated in an instrument of the same denomination, the stamp actually used under such option would have been sufficient.

12. The whole amount secured for the payment of an annuity, or other sum payable periodically for an indefinite time by a bond, promissory note, or mortgage-deed shall, for the purpose of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Bond &c., for payment of annuity.

Where the consideration for a conveyance is an annuity or other sum payable periodically for an indefinite time, such consideration shall for the purposes of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Consideration an annuity.

13. Where more instruments than one are required for the completion of any transaction involving the execution of a mortgage deed, settlement, conveyance or lease, the proper stamp required by this Act for such mortgage-deed, settlement, conveyance, or lease shall be borne by the principle instrument executed in such transaction, and each of the other instruments shall bear a stamp of one rupee.

Several instruments used in a single transaction.

The parties may determine for themselves which of such instruments shall, for the purposes of this section, be deemed to be the principal instrument :

Provided that were the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument.

14. An instrument so framed as to come within two or more of the definitions in section three shall, when the instruments to which those definitions apply are liable to different rates of duty under this Act, be charged with the highest of such rates :

Instruments coming within two or more of the definitions in sec. 3.

Provided that when any one instrument purports, for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters, or to convey by way of sale, to lease, or to give one subject matter and to mortgage another, such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts, or mortgages would be liable under this Act.

15. Nothing in this Act shall render the following instruments chargeable with duty :—
Instruments exempt from duty.

(1) Receipt or discharge granted to a cultivator for the rent of land paying revenue to Government, or (in the Presidencies of Madras and Bombay) of inam lands.

(2) Receipt given for money or securities for money deposited in any bank, or in the hands of any banker or person acting as a banker to be accounted for :

Provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for :

Provided further, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

(3) Receipt or discharge endorsed on or contained in any instrument duly stamped according to the law in force in British India at the date of its execution, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest or annuity or other periodical payment, thereby secured.

(4) Transfer by endorsement of a negotiable instrument or a policy of marine insurance or of insurance against fire.

(5) Letters of hypothecation accompanying a bill of exchange.

(6) Transfers of securities of the Government of India.

(7) Bond to Government for the due performance of the duties of any salaried office.

(8) Agreement or memorandum of an agreement for or relating to the sale of goods or merchandize.

(9) Lease granted to a cultivator, unless a fine or premium be paid in consideration of such lease.

(10) Counterpart of such lease.

(11) Surrender of land executed by a cultivator to his landlord.

(12) Affidavit made for the sole purpose of enabling any person to receive any pension or charitable allowance.

(13) Copy of any paper which a public officer is by law required to make or furnish in his official capacity.

(14) Copies made for the private use only of any person having the custody of the original instrument or of his counsel, attorney, or vakil.

(15) Receipt or other instrument executed by or on behalf of Government, in cases where the Government would, but for this exemption, be liable to pay for the stamp thereon.

(16) Letter of cover or engagement to issue a policy of insurance :

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy of insurance, nothing shall be recoverable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

16. The Governor General of India in Council may, from time to time, by order published in the *Gazette of India*, reduce or remit in the whole or any part of British India the duties chargeable under this Act on all and any of the instruments mentioned in the first and second schedules hereto annexed, or on any particular class of such instruments, or on any of the instruments belonging to such class, or on any of the instruments mentioned in the said schedules when executed or granted by or to any particular class of persons, or by or to any member of such class.

and may, in like manner, cancel or vary such order to the extent of the powers hereby given.

Every such cancelment or variation shall be published in the *Gazette of India*.

17. Nothing in this chapter, or in the schedules hereto annexed, shall be deemed to affect the stamp duties chargeable under Act No. XXVI of 1867, section six, or under any enactment relating to stamps used in judicial proceedings.

CHAPTER III.

UNSTAMPED OR INSUFFICIENTLY STAMPED DOCUMENTS.

18. (a) No instrument chargeable with stamp-duty shall be received in any court of justice, or by any person having by law or consent of parties authority to receive evidence, as creating, modifying, transferring or extinguishing, or purporting to create, modify transfer or extinguish, any right or obligation, or as evidence in any civil proceeding, or shall be acted upon in any such court, or by any such person as aforesaid, or by any public officer, or shall be registered by any officer acting under any law for the regis-

Instruments not duly stamped inadmissible in evidence.

tion of assurances or in any public office, or shall be authenticated by any public officer, unless such instrument bears a stamp of a value not less than the amount of the duty with which it is chargeable under the law in force in British India at the time of its execution.

(b) Every instrument chargeable with stamp-duty shall be admitted in evidence in any criminal proceeding (other than proceedings under chapter XXII of the Code of Criminal Procedure), although it may not have the stamp required by law impressed thereon or affixed thereto.

Except in criminal proceedings.

19. Subject to the provisions contained in section twenty-six, no person taking a bill of exchange or promissory note requiring a stamp under section eight, either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon, or to make the same available for any purpose, unless at the time when he so takes it the proper stamp is affixed thereto and cancelled in manner directed by this Act.

Foreign bill unstamped or with stamp cancelled.

20. When any instrument chargeable with stamp-duty executed on paper not bearing the stamp required by the law in force in British India at the time of its execution is produced in a civil court, the court, if satisfied that the omission to execute such instrument on paper bearing the proper stamp did not arise out of any intention to evade payment of the proper duty, and on payment of such duty, or, in the case of an insufficiently stamped instrument, of the sum required to make up the full amount chargeable on such instrument,

Powers of civil courts as to unstamped or insufficiently stamped instruments.

together with a penalty of the following amount (that is to say) :--

if the instrument is produced within one year from the date of its execution, five times, or if it is produced after one year from such date, twenty times.

Penalty.

such proper stamp-duty or deficient portion thereof as aforesaid, shall certify by endorsement on such instrument that the proper stamp-duty has been levied thereon :

Provided that no such penalty shall exceed one thousand rupees.

Such certificate shall be conclusive evidence as to the amount of stamp-duty leviable on such instrument, and the said instrument shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

21. (a) An entry of every such payment showing the amount thereof shall be made in a book to be kept by the court, and shall also be endorsed on the instrument in respect of which the payment is made, and such endorsement shall be signed by the presiding officer.

Registration of payments and penalties levied by civil courts.

(b) The Court shall at the end of every month make a return to the Collector of the money - (if any) which it has so received, distinguishing between the sums received by way of penalty and the sums received by way of duty, stating the number and title of the suit, the name of the party from whom the money was received, and the date (if any) and description of the instrument.

Return to Collector.

(c) The court shall pay over all money so received to the Collector, or to such person as he may from time to time appoint to receive the same.

22. If it appear to a civil or criminal court that any instrument filed or exhibited in such court was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the stamp-duty required by the law in force in British India at the time of its execution, the court may impound the instrument and send it to the Collector, and he shall thereupon prosecute the offender.

Impounding unstamped instruments in civil or criminal courts.

23. When any instrument is produced before any registering officer, or in any public office other than a civil or criminal court, if it appear to the registering officer or to the head of such public office that the instrument is chargeable with stamp-duty under the law in force in British India at the time of its execution, but that it does not bear a stamp of a value equal to or exceeding the value of the stamp prescribed therefor by that law, he shall impound the instrument, and send it forthwith to the Collector.

Impounding unstamped instruments in public office.

24. (a) When any instrument is produced before the Collector, otherwise than for the purpose of obtaining an adjudication under section thirty-nine, or has been sent to him under section twenty-three, he shall either proceed in accordance with the provisions of section twenty, exercising the powers thereby conferred on a civil court; or, if it appear to him that the instrument was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the proper stamp-duty, he shall prosecute all the persons that have executed the said instrument, or such of them as to him seem fit;

Powers of Collector as to unstamped or insufficiently stamped instruments.

Prosecution.

or if it appear to him that the instrument is properly stamped, or that it is not chargeable with stamp-duty under the law in force in British India at the time of its execution, he shall certify by endorsement thereon that it is properly stamped, or that it is not so chargeable (as the case may be); and he shall thereupon return such instrument to the registering officer or other public officer by whom it was sent, or to the person by whom it was produced, and subject to the provision contained in section forty, it shall be deemed to be properly stamped or not chargeable (as the case may be):

- (b) Provided that, in any case coming under this section, if the instrument is brought within one year from the date of its execution to the Collector, or other public officer by whom it has been sent to the Collector under section twenty-

three, and if the Collector is satisfied that such instrument has not been duly stamped previously to being signed or executed by reason of accident, mistake, inadvertence or urgent necessity, he may remit the whole or any part of the penalty prescribed by section twenty :

(c) Provided also that, in any case coming under this section in which an instrument, other than a bill of exchange or promissory note, purports to have been executed out of British India, if the Collector is satisfied that the instrument was so executed, and also that it has been brought to him within the three months next after its arrival in British India, he shall, on payment of the duty with which such instrument would have been chargeable if executed in British India, certify by endorsement thereon that the proper stamp-duty has been levied upon it.

(d) Subject to the provision contained in section forty, such certificate shall be conclusive evidence of the amount of stamp-duty leviable on the instrument, which shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

25. When the Collector elects to proceed under section twenty he shall (if he imposes a penalty) after endorsing on the instrument the certificate thereby directed, or (if he remits the whole of the penalty) after endorsing on the instrument a certificate to that effect, return such instrument to the registering or other public officer by whom it was sent or to the person by whom it was produced.

Validity of instrument for which Collector levies penalty.

Subject to the provision contained in section forty, the said instrument shall thereupon be, and be deemed to have been, as valid as if it was originally executed on paper bearing the proper stamp.

In case any instrument sent or returned under sections twenty-two, twenty-three, or twenty-four, or the former part of this section, be lost, destroyed or injured during transmission, the court or officer sending or returning the same shall not be liable for such loss, destruction or injury.

Loss of instruments sent under sections 22, 23, 24 or 25.

26. • (a) When any bill of exchange, promissory note, cheque or order for the payment of money on demand by any banker or person acting as a banker, chargeable hereunder with the duty of one anna, comes to his hands unstamped, he may affix thereto the necessary adhesive stamp, and cancel the same in the manner required by this Act, and upon so doing, may charge the duty against the person who ought to have paid the same, or deduct such duty from the sum so directed to be paid.

Power to stamp instruments chargeable with one anna.

required by this Act, and upon so doing, may charge the duty against the person who ought to have paid the same, or deduct such duty from the sum so directed to be paid.

(b) Such bill, note, cheque or order shall, so far as relates to the stamp-duty chargeable thereon, be valid : but this shall not relieve any person or firm from liability to the penalty which he or it may have incurred by issuing or giving the said bill, note, cheque or order unstamped.

27. (a) Any person, or the agent of any person, from whom money exceeding in amount twenty rupees is due or claimed to be due and who shall have paid such money, may provide a piece of paper with an adhesive stamp of one anna affixed thereto, and may require of the person entitled to such money, or any agent to whom the same shall have been paid, a receipt for such money and also the value of the said stamp.

(b) if any one to whom money shall have been so paid refuses to give such receipt upon demand thereof, or to pay the value of the said stamp thereon, he shall be liable for every such offence to a fine not exceeding one hundred rupees.

28. Except as provided in sections eight and twenty-six, no stamp shall be affixed to, or impressed on, any bill of exchange, or promissory note, or any instrument chargeable hereunder with the duty of one anna, subsequent to the execution thereof; nor shall the provisions of sections twenty and twenty-four apply to any such instrument.

CHAPTER IV.

CRIMINAL PENALTIES.

29. Any person or firm making, signing or issuing, or, except as provided in section twenty-six, accepting, endorsing, paying or receiving payment of, any bill of exchange, promissory note, cheque or other similar instrument liable to any of the duties hereby imposed, without the same being duly stamped,

and any person making, executing, or signing, otherwise than as a witness, any other instrument liable to any of such duties without the same being duly stamped,

shall, for every such offence, be liable to fine not exceeding one hundred rupees,

or, if ten times the value of the proper stamp exceeds one hundred rupees, to fine not exceeding ten times such value,

or, where an insufficient stamp has been used, if ten times the deficient amount exceeds one hundred rupees, to fine not exceeding ten times such amount.

30. Any person or firm presenting for acceptance or for payment, or accepting, paying, endorsing, transferring, or in any manner negotiating, any bill of exchange or promissory note drawn or made out of British India whereon there is not such stamp as is required by this Act, shall be liable for every such offence to fine not exceeding one hundred rupees.

Penalty for presenting, &c., unstamped foreign bills or notes.

31. Any person or firm presenting for acceptance or payment a bill of exchange or promissory note to which an adhesive stamp has been affixed under section eight,

Cancelling stamps on foreign bills by holder.

and any person or firm endorsing, transferring, or in any manner negotiating such bill or note,

shall, before delivering the same out of his or its hands, custody, or power cancel the stamp so affixed, in such manner as to show that the stamp has been made use of, and so that the same shall not admit of being used again.

Any person or firm who or which ought, as directed by this Act, to cancel such stamp in manner aforesaid, and refusing or neglecting so to do, shall be liable for every such offence to fine not exceeding one hundred rupees.

Penalty for failure to cancel such stamps.

32. Any person or firm drawing or executing within British India a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped as required by this Act the whole number of bills or policies of which such bill or policy purports the set to consist, shall, for every such offence, be liable to fine not exceeding one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets

33. Whenever an adhesive stamp is used as hereinbefore authorized, the person making or executing the instrument to which such stamp is affixed shall, before delivering the instrument out of his hands, custody or power cancel the stamp so used, so that it cannot be used again.

Cancellation of adhesive stamp by maker or executant.

Any person making or executing such instrument and failing to cancel the stamp affixed thereto in manner aforesaid shall, for every such offence, be liable to fine not exceeding one hundred rupees.

Penalty for failure to such stamp.

34. (a) When any moveable or immoveable property is sold, the full consideration-money directly or indirectly paid or secured, or agreed to be paid or secured, for the same, shall be truly set forth in words at length in the principal or

Consideration to be stated.

only instrument whereby the property sold is conveyed to, or vested in, the purchaser or in any other person by his direction.

(b) When any property is sold and conveyed subject to any mortgage or bond or other debt, or to any gross Mortgage-money to be deemed purchase-money. shall be deemed the consideration-money or part of the consideration-money (as the case may be) in respect whereof the duty chargeable under the first schedule to this Act shall be paid, notwithstanding the purchaser is not or does not become personally liable for such debt or sum, or does not agree to pay the same or to indemnify the seller against the same.

(c) If the full consideration-money is not set forth as aforesaid, the purchaser and the seller shall each be liable to fine not exceeding five hundred rupees, and shall also pay a fine of five times the amount of the excess of duty with which such instrument would have been chargeable under this Act if the full-consideration money had been duly set forth in such instrument, in addition to the duty actually paid for the same.

35. Any attorney, vakil, pleader, mukhtar or other person employed in or about the preparing of any instrument in or upon which the full consideration-money is hereby required to be truly set forth, or employed for any of the parties thereto in anywise about or relating to the transaction therein mentioned, who knowingly inserts or sets forth, or causes to be inserted or set forth, in or upon any such instrument any other than the full consideration-money, shall, for every such offence, pay a fine of not less than five hundred rupees and not exceeding five thousand rupees.

Every attorney, vakil, pleader, and mukhtar convicted under this section shall, from the date of such conviction, be disabled to practice as an attorney, vakil, pleader or mukhtar :

Provided that no person shall be liable to any penalty or disability under this section, unless the duty actually paid for the instrument is less than would have been payable for the same in case the consideration-money had been truly set forth as aforesaid.

36. Whoever abets within the meaning of the India Penal Code any offence made punishable by this Act shall be punished with the punishment hereinbefore provided for such offence.

Abetment.

37. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

Recovery of fines.

In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm, or to all or any of the members thereof.

38. Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half to the person on whose information the offender has been convicted.

CHAPTER V

JURISDICTION

39. When any instrument chargeable with stamp-duty under this Act, whether previously stamped or not, is brought to the Collector, and the person bringing it desires to have the opinion of that officer as to the duty with which it is so chargeable, and pays a fee of five rupees, the Collector shall assess and charge the duty to which, in his judgment, the instrument is liable; and upon payment of such duty or of such a sum as, with the duty already paid thereon, is equal to the duty so assessed and charged, and of the penalty, if any, incurred through the instrument having been executed on insufficiently stamped paper, shall certify by endorsement on such instrument that the full duty with which it is chargeable under this Act has been paid.

The instrument shall thereupon be deemed to be duly stamped and shall be receivable in evidence or otherwise in all courts and public offices as if originally executed on paper bearing the proper stamp :

Provided that nothing contained in the former part of this section shall authorize the Collector to make any such endorsement on bills of exchange, promissory note, or instruments chargeable with the stamp duty of one anna when brought to him on unstamped or insufficiently stamped paper subsequent to the drawing or execution thereof.

40. All certificates and orders of the Collector under this Act shall be open to revision on appeal or otherwise by the Chief Controlling Revenue Authority to which the Collector is subordinate :

Provided that no order passed on such revision shall invalidate any registration or other proceeding previously made or taken of or upon an instrument endorsed by the Collector under section twenty-four or section twenty-five.

41. (a) The chief controlling Revenue Authority may state any case coming before it under this Act and refer such case with its own opinion thereon, if the case arise in the Presidency of Fort St. George or the Presidency of Bombay, to the local High Court, and if

Reference to High Court.

it arise in any other part of British India, to the High Court at Fort William.

(b) Every such case shall be decided by at least three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

(c) If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(d) The High Court upon the hearing of any such case shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Revenue Authority by which the case was stated a copy of such judgement under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving the same, dispose of the case conformably to such judgment.

42. The Chief Controlling Revenue Authority may, upon petition.

Power to remit penalties. remit wholly or in part any penalty imposed under this Act.

43. All prosecutions in respect of any offence punishable by this Act shall be instituted and conducted by the

Institution and conduct of prosecutions. Collector or such other officer as the Local Government generally or the Collector specially authorizes in that behalf.

44. Offences punishable under this Act may be tried within the

Jurisdiction of Magistrate. limit of the towns of Calcutta, Madras and Bombay by a Magistrate of Police, and beyond those limits by the Magistrate of the District or a person exercising the powers of a Magistrate (as defined in the Code of Criminal Procedure) or of subordinate Magistrate of the first class:

Provided that, in imposing penalties under this Act, no such person shall exceed the limits of jurisdiction prescribed for him by the said Code.

CHAPTER VI.—MISCELLANEOUS.

45. If any person possessing any stamped paper which has been obtained in the manner allowed by this Act,

Refund in case of use- or Act no. X of 1862, or any paper on which
less or spoiled stamped the stamp has been denoted by the Collector
paper. or the Superintendent of Stamps, does not
require the same for use,

or if the paper so possessed becomes spoiled or unfit for use as hereinafter mentioned,

the Collector of the District in which the paper has been purchased may, upon application made to him within one year after such pur-

chase, and upon delivery to him of such paper, refund the amount paid to Government for the same, whether by the applicant or any other person ;

or in case the owner of the paper so spoiled or unfit for use, desires to be supplied with stamped paper of similar or equal value, the Collector may cause such paper to be delivered to him or his agent upon payment of the value of the paper on which the new stamp or stamps shall be impressed.

16. Stamped paper and paper on which the stamp has been denoted by the Collector or the Superintendent of stamps shall be held to be spoiled or unfit for use within the meaning of section forty-five when—

When stamped paper shall be held to be spoiled.

by accident happening to the same before any writing thereupon has been finally signed and executed, it is rendered unfit for use ;

or when, because of some error in the drawing up or copying of any writing thereon, discovered before such writing has been finally signed and executed, it is rendered of no avail ;

or when, by reason of death or refusal of the party whose signature may be necessary to effect the transaction intended by such writing, it remains incomplete and of no avail ;

or when, by refusal of any office or trust granted by writing thereon, it has failed of the purpose intended ;

or when, by reason of failure of consideration, the transaction intended to be effected or evidenced by a writing thereon cannot be effected or evidenced ;

or when, the transaction intended to be effected by a writing thereon has been effected by some other instrument duly stamped ;

or when, in the case of a negotiable instrument, such instrument is, by reason of non-delivery to the payee or person acting in his behalf, or other cause, never brought into use ;

or when, in the case of a bill of exchange other than a bill drawn in a set, it has not been presented for acceptance or payment.

47. When in case of a sale, or an exchange upon which money is paid for equality of exchange, or a lease for a premium, the full consideration-money is not truly set forth in the manner hereby directed, the purchaser, or the person paying money for equality of exchange, or the lessee

Suit where consideration is not stated.

(as the case may be), or his representative in interest, may sue for and recover back from the seller, or the person receiving such money, or the lessor (as the case may be), or his representative in interest, so much of the consideration-money as is not set forth as aforesaid, or the whole thereof, if no part of the same is so set forth ;

and in such suit, notwithstanding anything hereinbefore contained, the conveyance, instrument of exchange, or lease shall be admissible in evidence.

48. Every Local Government shall frame rules for regulating the sale of stamps and stamped paper required by this Act or by Act No. XXVI of 1867, for determining the persons by whom such sale is to be conducted, and for fixing the remuneration of such persons within the territories subject to its control; and may from time to time alter and add to such rules.

Such rules, alterations, and additions shall, when approved by the Governor-General of India in Council, and after publication in the local official Gazette, have the force of law.

Any person appointed to sell such stamps and stamped paper who knowingly disobeys any such rule shall be punished with simple imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

49. When an impressed stamp is used under section five to denote the amount of duty with which any instrument is chargeable, such amount shall be denoted by a single stamp, except when such amount exceeds one thousand rupees, in which case it may be denoted by two or more impressed stamps of which the aggregate amount is the amount so required:

Provided that, when a single impressed stamp of any amount less than one thousand rupees is not procurable on application to the Collector or stamp-vendor appointed under section forty-eight, it shall be lawful, on such officer making a certificate to that effect, for the person requiring such stamp to denote the amount by two or more impressed stamps, of which the aggregate amount is the amount so required.

50. When more stamped papers than one are used under section forty-nine for an instrument chargeable with stamp-duty under this Act, each paper so used shall contain a part of the instrument.

51. Every Local Government shall cause this Act and the schedules hereto annexed to be carefully translated into the principal vernacular languages of the territories subject to its control.

A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

SCHEDULE I.

Instruments chargeable with ad valorem Stamp-duties.

Description of Instrument.	Proper Stamp-duty.					
	If drawn singly.		If drawn in set of two, for each part of the set.		If drawn in set of three, for each part of the set.	
	Rs.	A. P.	Rs.	A. P.	Rs.	A. P.
1. Bill of exchange payable otherwise than on demand,—	When the amount of the bill or note does not exceed Rs. 100	0	1	00	1	00
	And when the amount exceeds Rs. 100 but does not exceed Rs. 200.	0	2	00	1	00
	And when the amount exceeds Rs. 200 but does not exceed Rs. 300.	0	3	00	2	00
	And when the amount exceeds Rs. 300 but does not exceed Rs. 600.	0	6	00	3	00
	And when the amount exceeds Rs. 600 but does not exceed Rs. 900.	0	9	00	5	00
	And when the amount exceeds Rs. 900 but does not exceed Rs. 1,200.	0	12	00	6	00
	And when the amount exceeds Rs. 1,200 but does not exceed Rs. 1,500.	0	15	00	8	00
	And when the amount exceeds Rs. 1,500 but does not exceed Rs. 2,500.	1	8	00	12	00
	For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000.	1	8	00	12	00
	For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000.	3	0	01	8	01
2. Promissory note payable otherwise than on demand,—	And for every Rs. 10,000 or part thereof in excess of Rs. 30,000	6	0	03	0	02

SCHEDULE I.—(Continued).

Instruments chargeable with ad valorem Stamp-duties.

Description of Instrument.		Proper Stamp-duty.	
		If drawn singly.	If drawn in duplicate, then for each part.
		Rs. a. p.	Rs. a. p.
3. Policy of insurance ...	When the amount insured does not exceed Rs. 1,000 ...	0 4 0	0 2 0
	And for every further sum of Rs. 1,000 insured or for every part thereof ...	0 4 0	0 2 0
4. Transfer of a share in a company or association. [Stamps may be denoted by adhesive stamp when the transfer is by endorsement]	When the amount paid for such share does not exceed Rs. 100 ...		Rs. a. p. 0 4 0
	For every Rs. 100 of such amount or part thereof in excess of Rs. 100 up to Rs. 1,000 ...	0 4 0	
	And for every Rs. 500 of the same or part thereof in excess of Rs. 1,000 ...	0 4 0	
	When the amount secured does not exceed Rs. 25 ...	0 2 0	
	When such amount exceeds Rs. 25 but does not exceed Rs. 50 ...	0 4 0	
5. Bond for any specified amount, other than an administration-bond, ...	When such amount exceeds Rs. 50 but does not exceed Rs. 100 ...	0 8 0	
	For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000 ...	0 8 0	
6. Bottomry-bond, ...	For every Rs. 500 or part thereof in excess of Rs. 1,000 up to Rs. 10,000 ...	2 8 0	
	For every Rs. 1,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ...	2 8 0	
7. Respondentia bond, ...	And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ...	12 8 0	
	(a) When the amount secured does not exceed Rs. 1,000 ...	The stamp-duty with which a bond for such amount is chargeable (No. 5). Five rupees.	
8. Customs-bond ...	(b) When such amount exceeds Rs. 1,000 ...		

SCHEDULE I.—(Continued).

Instruments chargeable with ad valorem Stamp-duties.

Description of Instrument.	Proper Stamp-duty.
9. Indemnity bond ...	<div> <div>(a) When the amount secured does not exceed Rs. 3,000</div> <div>(b) When such amount exceeds Rs. 3,000 or is not expressed.</div> </div> <div> <div>The stamp-duty with which a bond for such amount is chargeable (No. 5).</div> <div>Sixteen rupees.</div> </div>
10. Mortgage-deed when possession of the property comprised therein is not given by the mortgagor at the time of execution.	<div> <div>...</div> <div>...</div> <div>...</div> </div> <div> <div>The stamp-duty with which a bond for the amount secured is chargeable (No. 5).</div> </div>
11. Instrument of further charge on such property, whether by indorsement or otherwise.	<div> <div>...</div> <div>...</div> <div>...</div> </div> <div> <div>The stamp-duty with which a bond for the amount secured is chargeable (No. 5).</div> </div>
12. Bond of mortgage-deed for the due execution of an office, or to account for money received by virtue thereof.	<div> <div>(a) When the amount secured does not exceed Rs. 3,000</div> <div>(b) When such amount exceeds Rs. 3,000 or the amount is not expressed.</div> </div> <div> <div>The stamp-duty with which a bond for such amount is chargeable (No. 5).</div> <div>Sixteen rupees.</div> </div>
13. Assignment of any interest secured by a bond of mortgage-deed ...	<div> <div>(a) When the amount of such interest does not exceed Rs. 3,000 ...</div> <div>(b) In any other case</div> </div> <div> <div>The stamp-duty with which a bond for such amount is chargeable (No. 5).</div> <div>Sixteen rupees.</div> </div>
14. Settlement ...	<div> <div>...</div> <div>...</div> <div>...</div> </div> <div> <div>The stamp-duty with which a bond for the amount or value of the property thereby settled is chargeable (No. 5).</div> </div>
15. Conveyance ...	<div> <div>When the amount paid or secured does not exceed Rs. 50</div> </div> <div> <div>Rs. A P.</div> <div>0 8 0</div> </div>
16. Mortgage-deed, when possession of the property	<div> <div>When such amount exceeds Rs. 50 but does not exceed Rs. 100</div> </div> <div> <div>1 0 0</div> </div>

SCHEDULE I.—(Continued).

Instruments chargeable with ad valorem Stamp-duties.

Description of Instrument.		Proper Stamp-duty.
		Rs. A. P.
17. Instrument of further charge on such property whether by indorsement or otherwise ..	comprised therein is given by the mortgagor at the time of execution	For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000
		Rs. 100 up to Rs. 1,000
		For every Rs. 500 or part thereof in excess of Rs. 1,000 up to Rs. 10,000
		For every Rs. 1,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000
		For every Rs. 10,000 or part thereof in excess of Rs. 30,000 up to Rs. 1,00,000
18. Instrument of exchange or partition of immoveable property when money is paid for equality of exchange or partition		For every Rs. 20,000 or part thereof in excess of Rs. 1,00,000
		The stamp-duty with which a conveyance for the amount so paid is chargeable (No. 15), in addition to the stamp-duty with which an instrument of exchange of immoveable property or a partition-deed is chargeable under Schedule II.
19. Lease ...	(a) Where the lease is expressed to be for a term of less than one year	The stamp-duty with which a bond (No. 5) for the total amount payable under such lease is chargeable
	(b) Where the lease is expressed to be for a term of not less than one year but not more than three years ...	The stamp-duty with which a bond for the total amount payable under such lease during the first year of the term is chargeable.
	(c) Where the lease is expressed to be for a term exceeding three years, or where no term is expressed ...	The stamp-duty with which a conveyance for the total amount payable under such lease during the first year of the term is chargeable.

SCHEDULE I.—(Continued).

Instrument chargeable with ad valorem Stamp-duties.

Description of Instrument.	Proper Stamp-duty.
19. Lease— (<i>contd.</i>)	<div><div>(d) Where the lease is granted in consideration of a fine or premium and where no rent is reserved ...</div><div>(e) Where the lease is granted in consideration of a fine or premium, and also of a rent ...</div></div> <div>The stamp-duty with which a conveyance for the amount so paid is chargeable.</div> <div>The stamp-duty with which a conveyance for the amount of the fine or premium is chargeable, in addition to the stamp-duty with which the lease would be chargeable in case no such fine or premium had been paid.</div>
20. Surrender of lease.	<div><div>(a) Where the amount of stamp-duty chargeable on the lease does not exceed Rs. 16</div><div>(b) In any other case</div></div> <div>The stamp-duty with which the lease is chargeable (No. 19).</div> <div>Sixteen rupees.</div>
21. Appraisement of valuation— of any property or of any interest therein, or of the annual or monthly value thereof— or of any repairs wanted— or of the materials used or to be used in any building or of any Artificer's work,—	<div><div>(a) Where the amount of such appraisement or valuation does not exceed Rs. 500 ...</div><div>(b) Where it exceeds Rs. 500 ...</div></div> <div>Eight annas.</div> <div>One rupee.</div>
22. Award ...	<div><div>(a) Where the amount or value of the property in dispute expressed in such award does not exceed Rs. 500...</div><div>(b) Where such amount or value exceeds Rs. 500, or where no amount or value is expressed in the award</div></div> <div>Eight annas.</div> <div>One rupee.</div>

SCHEDULE I.—(Continued).

Instruments chargeable with ad valorem Stamp-duties.

Description of Instrument.	Proper Stamp-duty.
23. Copy, duplicate or extract, attested to be a true copy, duplicate or extract	<div data-bbox="378 319 673 487">(a) If the duty chargeable on the original does not exceed Rs. 5 or if no duty is chargeable on the original</div> <div data-bbox="378 504 673 646">(b) If the duty chargeable on the original exceeds Rs. 5, but does not exceed Rs. 20</div> <div data-bbox="378 646 673 730">(c) If such duty exceeds Rs. 20, but does not exceed Rs. 50 ...</div> <div data-bbox="378 739 673 814">(d) If such duty exceeds Rs. 50</div> <div data-bbox="699 453 854 487">Eight annas.</div> <div data-bbox="699 613 828 646">One rupee.</div> <div data-bbox="699 697 844 730">Two rupees.</div> <div data-bbox="699 772 849 806">Four rupees.</div>

SCHEDULE II.

Instruments chargeable with fixed Stamp-duties.

Description of Instrument.	Proper Stamp-duty.
1.—BILL OF EXCHANGE, PROMISSORY NOTE, CHEQUE, OR ORDER for the payment on demand of an amount exceeding twenty rupees 2.—LETTER OF CREDIT 3.—AGREEMENT OR MEMORANDUM OF AN AGREEMENT relating to the sale of any government security, share in a company or association, or bill of exchange 4.—CERTIFICATE OR OTHER DOCUMENT purporting to denote the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any company or association, or proposed company or association, or to become proprietor of shares, scrip or stock in or of any such company or association	<div data-bbox="678 1285 823 1318">One anna.*</div>

SCHEDULE II.—(Continued).

Instruments chargeable with fixed Stamp-duties.

Description of Instrument.	Proper Stamp-duty.
5.—NOTE OR MEMORANDUM written in any book or written on a separate paper, whereby any account, debt or demand or any part of any account, debt or demand therein specified, and amounting to twenty rupees or upwards, is expressed to have been balanced, or is acknowledged to be due	
6.—SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel	
7.—RECEIPT OR DISCHARGE given for or upon the payment of money, or delivery of goods, in satisfaction of a debt, the amount or value of which money or goods exceeds twenty rupees	One anna.
8.—PROXY to vote at any one meeting of—	[This duty may be denoted by an adhesive stamp.]
(a)—Members of a company or association whose stock or funds is or are divided into shares and transferable	
(b)—Municipal Commissioners	
(c)—Justices of the Peace, being a body corporate	
(d)—Proprietors, members or contributors to the funds of any institution	
9.—BILL OF LADING	Four annas.
10.—DOCK-WARRANT	
11.—ANY AGREEMENT OR MEMORANDUM OF AN AGREEMENT not otherwise provided for by this Act :	Eight annas.
Provided that where two or more letters are offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped as an agreement.	

SCHEDULE II.—(Continued).

Description of Instrument.	Proper Stamp-duty.
12.—NOTICE OF PROTEST by the master of a ship	Eight annas
13.—POWER-OF-ATTORNEY to present for registration—	
(a)—A single instrument (b)—Any number of instruments required for the completion of a single transaction	
14.—AFFIDAVIT not made for the immediate purpose of being produced in any Court	
15.—COLLATERAL INSTRUMENT not otherwise provided for by this schedule	
16.—COUNTERPART OF ANY INSTRUMENT chargeable with stamp-duty under this Act; Provided that the counterpart shall not be available unless the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects	
17.—INSTRUMENT OF DISSOLUTION OF PARTNERSHIP	One rupee.
18.—POWER-OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with does not exceed five hundred rupees	
19.—POWER-OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with exceeds five hundred rupees.	

SCHEDULE II—(Continued).

Description of Instrument.	Proper Stamp-duty.
20.—BOND OR MORTGAGE-DEED executed as a collateral security for the performance of any act, where such performance is secured by some instrument previously executed on stamped paper in accordance with the law in force in British India at the time of its execution	Two rupees.
21.—INSTRUMENT EVIDENCING AN AGREEMENT to secure the repayment on or before the expiration of three months from the date of such instrument of a loan made upon the deposit of title-deeds or other valuable security	
22.—CHARTER-PARTY	
23.—NOTARIAL ACT	
24.—PROTEST OF A BILL OF EXCHANGE OR PROMISSORY NOTE	
25.—PROTEST OF THE MASTER OR OWNER OF A SHIP	Four rupees.
26.—INSTRUMENT OF CO-PARTNERSHIP	
27.—RECONVEYANCE OF MORTGAGED PROPERTY, when the original mortgage-deed has been stamped in accordance with the law in force in British India at the time of its execution	
28.—COMPOSITION-DEED	
29.—LETTER OF LICENSE	
30.—RELEASE	Eight rupees.
31.—INSTRUMENT PURPORTING TO CONFER AN AUTHORITY TO ADOPT	
32.—POWER-OF-ATTORNEY not otherwise provided for by this Schedule	

SCHEDULE II.—(Continued).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
33.—ARTICLES OF ASSOCIATION of a Company	Sixteen rupees.
34.—MEMORANDUM OF ASSOCIATION of a Company	
35.—APPOINTMENT in execution of a power, whether of trustees, or of property, moveable or immoveable, where made by any writing, not being a will	
36.—DECLARATION OF ANY USE OR TRUST of or concerning any property, moveable or immoveable, where made by any writing not being a will	
37.—INSTRUMENT OF GIFT OF IM-MOVEABLE PROPERTY... ..	
38.—INSTRUMENT OF EXCHANGE OF IMMOVEABLE PROPERTY where no money is paid or agreed to be paid for equality of exchange	One hundred rupees.
39.—PARTITION-DEED relating to immoveable property where no money is paid or agreed to be paid for equality of exchange	
40.—PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN IN-VENTION, or for the extension of the term of the exclusive privilege of making, using or selling such invention in India	Five hundred rupees.
41.—ARTICLES OF CLERKSHIP or contract whereby any person shall first become bound to serve as a clerk in order to his admission as an Attorney in any High Court	

ACT X OF 1862.

S. 27.—No larger sum shall be recoverable in any court of justice by reason of any Deed, Instrument, or writing, for which an optional stamp is indicated to be proper by the Schedule A annexed to this Act, than the largest sum for which, if specially stated in the Deed, Instrument or writing of the same denomination, the stamp actually used under the option so given

What sum recoverable under a writing bearing an optional stamp.

would be of sufficient value. And no such Deed, Instrument, or writing shall be held by any Court of Justice to be valid in respect to any sum of money larger than that for which the stamp on the said Deed, Instrument or writing would be sufficient.

SCHEDULE A.

Containing a specification of the Deeds, Instruments, and Writings which require to be stamped under this Act, and of the proper Stamps for such Deeds, Instruments, and Writings.

Description of Instruments.	Proper Stamp-duty.
<p>1. Agreement, or any Minute or Memorandum of an Agreement not being of the nature of a Bond or other Obligation for the payment of money, or of a Conveyance or of a Deed of Mortgage, Gift, or Dower, and not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the parties.</p>	<p>1 Rupee.</p>
<p>NOTE—If two or more letters are offered in evidence to prove an Agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an Agreement.</p>	
<p>If the Agreement, or Minute or Memorandum be of the nature of a Bond or other Obligation for the payment of money, or of a Conveyance, or of a Deed of mortgage, Gift or Dower</p>	<p>The same Stamp as prescribed by this Schedule for such Instrument.</p>
<p>2. Agreement for an annual or periodical payment not otherwise charged for in this Schedule</p>	<p>The same Stamp as for a Bond for the amount of ten years' payment, or of the total sum secured if less.</p>
<p>3. Agreement, or Minute or Memorandum for a lease, or of the terms and conditions on which any land, house, or other real property is let, held, or occupied</p>	<p>The same Stamp as for a Lease for the same property on the same terms and conditions.</p>
<p>Provided that any lease afterwards made of the same land, house, or other real property in pursuance of such Agreement, Minute or Memorandum, shall be chargeable with a Stamp Duty of 8 Annas only, to be denoted by a Stamp, which shall be affixed to such lease by the Collector of Stamp Revenue of the District upon the production of the Agreement, Minute, or Memorandum bearing the proper Stamp, and not otherwise.</p>	

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.	
4. Agreement to cultivate, manufacture, produce, provide, or deliver any article in consideration of advance made—	<i>Rupees Annas.</i>	
If the amount advanced do not exceed 50 Rs. 	0	1
If it exceed 50 Rs. but do not exceed 100 Rs. 	0	2
If it exceed 100 Rs. but do not exceed 200 Rs. 	0	4
If it exceed 200 Rs. but do not exceed 500 Rs. 	0	8
If it exceed 500 Rs.	1	0.
5. Agreement or Contract, or any Minute or Memorandum of an Agreement, made for or relating to the sale or purchase of any Security of the Government of India, Railway Scrip, Share in any Joint Stock Company, or Bill of Exchange, to the amount or value of 100 Rupees or upwards 	1 Anna.	
EXEMPTIONS.		
Agreement or Contract, or any Minute or Memorandum of an Agreement, made for or relating to the sale or purchase of any Security of the Government of India, Railway Scrip, Share in any Joint Stock Company, or Bill of Exchange, if not of the amount or value of 100 Rupees.		
Agreement or Contract, or any Minute or Memorandum of an Agreement, made for or relating to the sale of any goods or merchandise.		
6. Agreement for the hire of a Steamer for tugging a vessel, if for a single trip within the limits of the Port. 	8 Annas.	
Beyond the limits of the Port 	1 Rupee.	
7. Agreement for service of personal employment by the month or for any longer period—		
If the amount of monthly salary or wages secured by such Agreement do not exceed in value 5 Rs. 	1 Rupee.	

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.
If the amount so secured exceed 5 Rs. but do not exceed 20 Rs.	1 Annas.
If the amount so secured exceed 20 Rs. but do not exceed 50 Rs.	8 Annas.
In any other case	1 Rupee.
<i>Exemption.</i>	
Agreement for service or personal employment for any period less than a month.	
8. Affidavit or solemn declaration not made for the immediate purpose of being filed, read, or used in any Court of Justice, per sheet.	1 Rupee.
9. Assignment, if not of the nature specified under the head of Conveyance or Settlement, nor especially exempted—	
In any case where the Assignment is of any interest secured by an original Deed, Instrument, or Writing on a Stamp of a value less than eight rupees.	The same Stamp as the original Deed.
In any other case	8 Rupees.
EXEMPTION.	
Transfer by mere endorsement of a Bill of Exchange, Promissory Note, or other negotiable Instrument; or of a Bill of Lading and transfer by Assignment of a policy of Insurance.	
10. Bill of Exchange, Letter of Credit, Draft, Cheque, Promissory Note, Hoondree or other Order or Obligation for the payment of money, not being a Bond, Instrument, or Writing bearing the attestation of one or more witnesses—	
If payable on demand and bearing the date on which it is made, and if the sum payable exceed twenty Rupees	1 Anna.

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamp-duty.		
	If drawn singly.	If drawn in a set of two, each to be stamped.	If drawn in a set of three, each to be stamped.
If payable at sight or at any period not exceeding one year after date or sight—	Rs. A.	Rs. A.	Rs. A.
When not exceeding 100 Rs. ...	0 1	0 1	0 1
When exceeding 100 Rs. and not exceeding 250 ...	0 3	0 2	0 1
When exceeding 250 Rs. and not exceeding 500 Rs. ...	0 6	0 3	0 2
When exceeding 500 Rs. and not exceeding 1,000 Rs. ...	0 12	0 6	0 4
When exceeding 1,000 Rs. and not exceeding 2,500 Rs. ...	1 8	0 12	0 8
When exceeding 2,500 Rs. and not exceeding 5,000 Rs. ...	3 0	1 8	1 0
When exceeding 5,000 Rs. and not exceeding 10,000 Rs. ...	6 0	3 0	2 0
When exceeding 10,000 Rs. and not exceeding 20,000 Rs. ...	12 0	6 0	4 0
When exceeding 20,000 Rs. and not exceeding 30,000 Rs. ...	18 0	9 0	6 0

And for every further 10,000 Rs. or for any part of every further 10,000 Rs., if drawn singly, 6 Rs. in addition; if drawn in a set of two, each to be stamped 3 Rs. in addition; if drawn in a set of three, each to be stamped, 2 Rs. in addition.

If bearing no date, the same stamp as if payable at sight, unless any date or period of payment be specified in which case the same Stamp as prescribed by Article 12 for a Bond of the same amount.

SCHEDULE A.—(Continued).

Description of Instruments	Proper Stamp-duty.
If drawn in a set of more than three, each of the set in excess of three to be stamped as required for each one of a set drawn in a set of three.	
If not drawn singly, each of the set shall state that it is drawn in a set of two or three and shall denote on the face thereof that it is the first, second, or third of the set as the case may be.	
If payable at a period exceeding one year after date or sight	The same Stamp as prescribed by Article 12 for a Bond for the payment of the same amount.
11. Bill of Lading of or for any goods to be exported	4 Annas for a single Bill, acknowledgment, or instrument, or each part of every set of the same.
Bill of Sale.—See Conveyance and Mortgage.	
12. Bond or other Obligation for the payment either absolutely or conditionally of any definite or certain sum of money, not otherwise charged for or expressly exempted from the payment of Stamp Duty in this Schedule—	
If for any sum not exceeding 25 Rs.	
Above 25 Rs. and not exceeding 50 Rs.	
Above 50 Rs. and not exceeding 100 Rs.	
Above 100 Rs. and not exceeding 200 Rs.	
Above 200 Rs. and not exceeding 300 Rs.	
Above 300 Rs. and not exceeding 500 Rs.	
Above 500 Rs. and not exceeding 700 Rs.	
Above 700 Rs. and not exceeding 1,000 Rs.	
Above 1,000 Rs. and not exceeding 2,000 Rs.	
Above 2,000 Rs. and not exceeding 3,000 Rs.	
Above 3,000 Rs. and not exceeding 5,000 Rs.	
Above 5,000 Rs. and not exceeding 10,000 Rs.	
Above 10,000 Rs. and not exceeding 20,000 Rs.	
Above 20,000 Rs. and not exceeding 40,000 Rs.	

Ruppes.	Annas.
0	2
0	4
0	8
1	0
2	0
4	0
5	0
6	0
10	0
15	0
25	0
35	0
60	0
100	0

SCHEDULE A.--(Continued).

Description of Instruments.	Proper Stamps.	
	<i>Rupees.</i>	<i>Annas.</i>
Above 40,000 Rs. and not exceeding		
60,000 Rs.	125	0
Above 60,000 Rs. and not exceeding		
80,000 Rs.	150	0
Above 80,000 Rs. and not exceeding		
1,00,000 Rs.	200	0
And for every further part of		
1,00,000 Rs.	100	0
And for every further 1,00,000	200	0
<p>13. Bond or Agreement for a loan made upon the deposit of Title-Deeds or a Note or other Security of the Government of India, Share or Debenture of any Railway or Joint Stock Company, Bill of Lading, Warrant for goods deposited in a Bonded or other warehouse or Assignment of any goods, with or without a deposit of the acceptance or promissory Note of the borrower. Provided that no such Agreement is drawn in the form of a Bond or of a Bill of Exchange or Promissory Note, or in any such way as would render it a Negotiable Instrument passing by endorsement, for whatever amount, in case the period of such loan shall not exceed one month</p>		
<p>If such loan is for a period exceeding one month and not exceeding two months</p>	1	0
<p>If such loan is for a period exceeding two months and not exceeding three months</p>	2	0
<p>If such loan is for period exceeding three months</p>	4	0
<p>14. Bond or other Obligation concerning respondentia and bottomry</p>	<p>The same Stamp as prescribed by Article 12 for a Bond of the like amount.</p>	
<p>15. Bond or other Obligation given as security for the transfer of any Government Security or Stock of any public Company, or for the delivery or account-</p>	<p>The same Stamp as prescribed by Article 12 for a Bond for the like amount.</p>	

SCHEDULE A.--(Continued).

Description of Instruments.	Proper Stamps
ing for any matter or thing capable of being valued	The same Stamp as prescribed by Article 12 for a Bond for the payment of the amount engaged to be paid or account for, or of the value of the thing to be delivered or transferred.
16. Bond or other Obligation for an annual or any periodical payment, not being interest upon any principal sum secured by the Bond or other Obligation whether for a fixed or for an indefinite period	The same Stamp as prescribed by Article 12 for a Bond for the payment of a sum equal to ten times the yearly payment, or of the total sum secured, if less.
17. Bond or other Obligation, when the amount of the money to be secured is not specified	An optional Stamp--See Section XXVII of the Act.
When the amount is limited to a certain sum	The same Stamp as prescribed by Article 12 for a Bond for the payment of such limited sum.
18. Bond or other Obligation for the due execution of an office or work, and any other Bond not otherwise specially provided for, or expressly exempted from the payment of Stamp Duty by this Schedule	An optional Stamp--See Section XXVII of the Act.
19. Bond or other Obligation taken as collateral security with some Deed or Instrument executed on the Stamp prescribed for Conveyance or Money Bond, or as security for the performance of any other Contract, Covenant or Agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand	The same Stamp as the Deed, Instrument, Contract, Covenant, or Agreement, if of value not exceeding eight Rupees; otherwise a Stamp of eight Rupees.

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.																																		
20. Certificate, that is to say, a document denoting or intended to denote the right or title of the holder thereof, or any person, to any Share or shares or Scrip in any Joint Stock or other Company, or proposed or intended Company; or any Certificate declaring or entitling the holder thereof, or any person, to be or become the proprietor of a Share or Shares or Scrip of or in any such Company	1 Anna.																																		
21. Charter-party, or any Agreement or Contract for the Charter or hiring of any sea-going Ship or Vessel	2 Rupees.																																		
22. Composition Deed, or other instrument of Composition between a debtor and his creditor	8 Rupees.																																		
23. Conveyance or Deed or Instrument of any kind or description whatsoever, executed for the sale or transfer, for a consideration of any land, tenement, rent, annuity, or other property, real or personal, moveable or immoveable, or of any right, title, or claim to or upon, or interest in, any land, house, rent, annuity or other property that is to say, for or in respect of the principal or only Deed, Instrument, or Writing whereby the property sold shall be conveyed to, or otherwise vested in, the purchaser, or to some other person by his direction—																																			
When the purchase or consideration money therein expressed or denoted shall not exceed one hundred Rupees	1 Rupee.																																		
<table> <tr> <td>Above 100 Rs. and not exceeding 200 Rs.</td><td>...</td></tr> <tr> <td>Above 200 Rs. and not exceeding 400 Rs.</td><td>...</td></tr> <tr> <td>Above 400 Rs. and not exceeding 800 Rs.</td><td>...</td></tr> <tr> <td>Above 800 Rs. and not exceeding 1,200 Rs.</td><td>...</td></tr> <tr> <td>Above 1,200 Rs. and not exceeding 2,000 Rs.</td><td>...</td></tr> <tr> <td>Above 2,000 Rs. and not exceeding 3,000 Rs.</td><td>...</td></tr> <tr> <td>Above 3,000 Rs. and not exceeding 4,000 Rs.</td><td>...</td></tr> <tr> <td>Above 4,000 Rs. and not exceeding 5,000 Rs.</td><td>...</td></tr> </table>	Above 100 Rs. and not exceeding 200 Rs.	...	Above 200 Rs. and not exceeding 400 Rs.	...	Above 400 Rs. and not exceeding 800 Rs.	...	Above 800 Rs. and not exceeding 1,200 Rs.	...	Above 1,200 Rs. and not exceeding 2,000 Rs.	...	Above 2,000 Rs. and not exceeding 3,000 Rs.	...	Above 3,000 Rs. and not exceeding 4,000 Rs.	...	Above 4,000 Rs. and not exceeding 5,000 Rs.	...	<table> <tr> <td>Rupees.</td><td>Annas.</td></tr> <tr> <td>2</td><td>0</td></tr> <tr> <td>4</td><td>0</td></tr> <tr> <td>8</td><td>0</td></tr> <tr> <td>12</td><td>0</td></tr> <tr> <td>20</td><td>0</td></tr> <tr> <td>30</td><td>0</td></tr> <tr> <td>40</td><td>0</td></tr> <tr> <td>50</td><td>0</td></tr> </table>	Rupees.	Annas.	2	0	4	0	8	0	12	0	20	0	30	0	40	0	50	0
Above 100 Rs. and not exceeding 200 Rs.	...																																		
Above 200 Rs. and not exceeding 400 Rs.	...																																		
Above 400 Rs. and not exceeding 800 Rs.	...																																		
Above 800 Rs. and not exceeding 1,200 Rs.	...																																		
Above 1,200 Rs. and not exceeding 2,000 Rs.	...																																		
Above 2,000 Rs. and not exceeding 3,000 Rs.	...																																		
Above 3,000 Rs. and not exceeding 4,000 Rs.	...																																		
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40	0																																		
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SCHEDULE A.—(Continued)

Description of Instruments.	Proper Stamps.	
	Rupees.	Annas.
Above 5,000 Rs. and not exceeding 7,500 Rs.	75	0
Above 7,500 Rs. and not exceeding 10,000 Rs.	100	0
Above 10,000 Rs. and not exceeding 20,000 Rs.	150	0
Above 20,000 Rs. and not exceeding 40,000 Rs.	200	0
Above 40,000 Rs. and not exceeding 60,000 Rs.	300	0
Above 60,000 Rs. and not exceeding 80,000 Rs.	400	0
Above 80,000 Rs. and not exceeding 1,00,000 Rs.	500	0
And for every further 50,000 Rs.	200	0
Or part thereof	100	0
24. Conveyance when the consideration is an annuity	The same Stamp as for a conveyance when the purchase money is equal to ten times the annuity.	
25. Conveyance of any kind whatever not otherwise charged, if the value of the property conveynd or of the consideration for the Conveyance be stated or appear on the face of the Conveyance.	The same duty as would be charged if a consideration in money equal to such value were expressed in the conveyance as the consideration thereof.	
If no value appear on the face of the Conveyance.		
25. Conveyance or Transfer of a share of a Banking Corporation or Joint Stock Company, whether by Deed or Endorsement when the market value of the Share transferred does not exceed 100 Rs. per share	50 Rupees.	
When it exceeds 100 Rs. and does not exceed 200 Rs.	1 Annas.	
When it exceeds 200 Rs. and does not exceed 300 Rs.	8 Annas.	
When it exceeds 300 Rs. and does not exceed 400 Rs.	12 Annas.	
and for every 100 Rs. a further Duty of 4 As. and for the conveyance or transfer of every quarter or half of any such Share, a corresponding rate of Duty.	1 Rupee.	

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.
EXEMPTION.	
All transfer of subscription to any of the Government Loans or other Government Securities.	
27. CO-PARTNERSHIP.—Deed or other Instrument of—	8 Rupees.
28. COPY.—COPY or Extract of any Deed, Instrument or Writing attested or certified to be a true copy or extract and furnished for the purpose of being given in evidence in any Civil or Revenue Proceeding, or made for the security or use of any person being a party to, or taking any benefit or interest immediately under such Deeds, Instrument, or Writing	The same Duty as the Original when such Duty does not exceed 8 Annas.
If the Duty chargeable on the original exceed 8 As. but do not exceed 10 Rs.	1 Rupee.
If the Duty chargeable on the original exceed 10 Rs. but do not exceed 50 Rs.	2 Rupees.
If the Duty chargeable on the original exceed 50 Rs.	5 Rupees.
NOTE. —Every copy bearing the proper Stamp, which shall at any time be offered in evidence, shall be deemed to have been made for that purpose.	
29. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the Deed, Instrument or Writing per sheet	8 Annas.
30. Copy, attested or certified to be a true copy or made for the purpose of being given in evidence in any Civil or Revenue Proceeding, of any Will, Testament, or Codicil, or of any Probate, or Probate Copy of any Will or Codicil, or of any Letter of Administration, or of any confirmation of any Testament, Testamentary or Dative, or of any part thereof respectively	1 Rupee.
31. Copy, or Extract of any Deed, Instrument, or Writing annexed to any Deed, Instrument, or Writing.	The same Stamp as the Deed, Instrument, or Writing from which the copy, or extract is made, if of value not exceeding 8 As. ; otherwise 8 As. per sheet.

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.
32. Copy authenticated or certified of any record, letter, account, statement, report, or other writing, furnished to any individual from any Government office, per sheet ... For copies of judicial or Revenue Papers given from Court of Justice, Revenue Officers, etc. ...	8 Annas. See Schedule B.
EXEMPTION.	
Copy of any paper which any Public Officer is required to make or furnish, for which a Stamp is not specially required by this Schedule.	
33. Counterpart of a lease ... EXEMPTION. Counterpart of a lease executed by a ryot or other actual cultivator of the soil, provided that no fine or premium be paid as part of the same transaction. (For Madras). Counterpart of a lease executed between landlord and tenant relative to lands in the Presidency of Madras, subject to the payment of Revenue to Government. A Counterpart of a lease includes a Kubbant and the like.	The same Stamp as for such lease.
34. CONVENANT.—Any separate Deed of Covenant made on the sale or mortgage of any immoveable property or of any right or interest therein (the same not being a Deed chargeable with <i>ad valorem</i> Duty under the head of Conveyance in this Schedule) for the conveyance, assignment, surrender, or release of such property, right, or interest, or for the title to or quiet enjoyment, freedom from incumbrance, or further assurance of such property, right, or interest or otherwise by way of indemnity in respect of the same, or for the production of the Title-Deeds, or Muniment of Title relating thereto, or for all or any of those purposes.	10 Rupees.
35. Deed of Gift or Dower whether to take effect on the instant or at a future period. determinate or indeterminate ...	The same Stamp as for a Conveyance.

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.	
36. Deed of any kind not otherwise charged or expressly exempted from Stamp Duty by this Schedule ...	1 Rupee.	
37. Duplicate or counterpart of any Deed, Instrument, or Writing of any description whatever chargeable with Duty under this Act, not otherwise charged for or expressly exempted from Stamp Duty under this Schedule.	The same Duty as the original when such duty does not exceed 8 annas.	
If the Duty chargeable on the original exceed 8 As., but not exceed 10 Rs. ...	1 Rupee.	
If the Duty chargeable on the original exceed 10 Rs., but not exceed 50 Rs. ...	2 Rupees.	
If the Duty chargeable on the original exceed 50 Rs. ...	5 Rupees.	
Provided that such duplicate or counterpart Stamp shall be affixed by the Collector of Stamp Revenue of the District upon the production of the original Deed bearing its proper Stamp, and not otherwise.		
38. EXCHANGE—Any Deed, Instrument, or Writing whereby any real property shall be conveyed or surrendered in exchange for other property ...	The same Stamp as for a Conveyance.	
39. Lease.—Any lease made in perpetuity, or for a term of years, or period determinable with one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent.	The same Stamp as for a Conveyance or Deed of Sale for a sum of the amount of such consideration.	
40. Any lease of any land, house, or other real property at a rent, without any payment of any sum of money by way of fine or premium—	When the lease is for a period not exceeding one year.	When the lease is for a period exceeding one year
Where the rent calculated for a whole year shall not exceed in value 24 Rs.	Rs. A. 0 4	Rs. A. 0 8
Exceeding 24 Rs., but not exceeding 50 Rs. ...	0 8	0 12
Exceeding 50 Rs., but not exceeding 100 Rs. ...	0 12	1 0
Exceeding 100 Rs., but not exceeding 250 Rs. ...	1 0	2 0

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.			
	When the lease is for a period not exceeding one year.		When the lease is for period exceeding one year.	
	Rs.	A.	Rs.	A.
Exceeding 250 Rs., but not exceeding 500 Rs.	2	0	4	0
Exceeding 500 Rs., but not exceeding 1,000 Rs., ..	4	0	8	0
Exceeding 1,000 Rs., but not exceeding 2,000 Rs.	8	0	16	0
Exceeding 2,000 Rs., but not exceeding 4,000 Rs.	16	0	32	0
Exceeding 4,000 Rs., but not exceeding 6,000 Rs.	24	0	48	0
Exceeding 6,000 Rs., but not exceeding 10,000 Rs. ..	40	0	80	0
Exceeding 10,000 Rs., but not exceeding 25,000 Rs.	100	0	200	0
Exceeding 25,000 Rs., but not exceeding 50,000 Rs.	200	0	400	0
and for every additional 25,000 or for any part of every additional 25,000 Rs.	100	0	200	0
41. Any lease of any land, house, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same Stamp as for a lease for a period exceeding one year.			
42. Any lease of any land, house, of other real property stipulating for a rent, granted in consideration of a fine or premium.	A Stamp of value equal to the joint value of the Stamps for a Conveyance in consideration of the fine, and a lease for the rent.			
EXEMPTION.				
Any lease executed to a ryot or other actual cultivator ; provided that no fine or premium be paid as part of the same transaction.				
(For Madras).				
Every lease or other engagement executed between landlord and tenant relative to land in the Presidency of Madras, subject to the payment of Revenue to Government.				

SCHEDULE A.—(Continued),

Description of Instruments.	Proper Stamps.
43. Letter, or Power-of-Attorney, not being of the kinds provided for in Schedule B	4 Rupees.
If the Letter or Power-of-Attorney be for the performance of one act only, and the value of the property to be dealt with be expressed in the Letter or Power and do not exceed 500 Rupees ...	1 Rupee.
44. Warrant of Attorney to confess judgment or Cognovit, unless taken as Collateral security for the payment of any sum of money secured by another Instrument stamped with an <i>ad valorem</i> Stamp under this Act	The same Stamp as for a Bond.
If given for securing any sum of money exceeding 500 Rupees, for which the person giving the same shall then be in actual custody under an arrest on mesne process or in execution ...	4 Rupees.
If given as such collateral security as abovementioned	5 Rupees.
NOTE—For Wakalutnamahs, Moo-khtar-namahs, and other powers required to be filed for the conduct of suits or proceeding of any kind pending before the Courts of Justice or before the Revenue Authorities	See Schedule B.
45. Letter of license from a creditor to his debtor	8 Rupees.
46. MORTGAGE—Any Deed of Mortgage or Conditional Sale, Assignment, Pledge, or Hypothecation, or of any Acknowledgement in the nature of a Mortgage, Conditional Sale, Pledge, or Hypothecation of or in respect of any immoveable property with or without possession given or of any personal property without possession given, intended as a security for money due or to be lent thereupon; also any Deed or Contract accompanied with a deposit of title deeds to any property, where the same may be made as security for payment of money due or lent at the time.	The same Stamp as for a Bond for the payment of the amount due or lent.

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.
17. Deed of Mortgage or Conditional Sale, Assignment, Pledge or Hypothecation, or of any Acknowledgment in the nature of a Mortgage, Conditional Sale, Assignment, Pledge, or Hypothecation given for a loan or advance made on the deposit of any personal property	The same Stamp as for a Promissory Note.
18. Deed of Mortgage or Conditional Sale, Assignment, Pledge, or Hypothecation with or without possession given of any immoveable property or of any right, title, or interest therein, intended as security for the transfer of a Government Security, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued	The same Stamp as for a Bond for the payment of the total amount assured, or for the <i>bona fide</i> value.
19. Deed of Mortgage or Conditional Sale, Assignment, Pledge, or Hypothecation with or without possession given of any immoveable property, or of any right, title, or interest therein, given for the security of an annuity for an indefinite period, such as a Life Annuity ...	The same Stamp as for ten times the annual payment.
Where it may be stipulated that the amount secured by such Mortgage shall not exceed a certain sum	The same Stamp as for a Deed of Mortgage of such limited sum.
Where the total amount secured by the Mortgage is unlimited	An optional Stamp—See Section XXVII of the Act.
50. Deed of Mortgage where a Bond shall have been already taken for the amount secured, or wherefrom any other cause, the Mortgage shall act merely as a collateral security to some other transaction in which an Instrument requiring a Stamp has been executed	The same Stamp as for the Bond or other Instrument if of value not exceeding eight Rupees; otherwise a Stamp of eight Rupees.

SCHEDULE A—(Continued).

Description of Instruments.	Proper Stamps.																								
<p>Note.—Where there are more Deeds than one required to execute the Mortgage in the manner desired by the parties, then for every other Deed than the principal Deed ; provided the original Deed has been duly stamped</p>	<p>The same Stamp as for the principal Deed if of value not exceeding eight Rupees; otherwise a Stamp of eight Rupees.</p>																								
EXEMPTION																									
<p>Letter of Hypothecation accompanying a Bill of Exchange.</p>																									
<p>51. MORTGAGED PROPERTY— Re-conveyance of—</p>	<p>The same Stamp as for an Assignment.</p>																								
<p>52. MORTGAGED PROPERTY— Release of an equity of redemption of—</p>	<p>The same Stamp as for a Conveyance.</p>																								
<p>53. NOTARIAL ACT.—Any Notarial Act whatsoever not otherwise charged in this Schedule.</p>	<p>2 Rupees.</p>																								
<p>54. Partition by private Agreement or made by a Public Officer, of an estate or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, for each sharer's copy of the Deed of partition—</p>																									
<p>When the sharer's portion does not exceed one hundred rupees in value.</p>	<table> <tr> <td>Rs.</td><td>As.</td></tr> <tr> <td>0</td><td>8</td></tr> </table>	Rs.	As.	0	8																				
Rs.	As.																								
0	8																								
<table> <tr> <td>Rs.</td><td>Rs.</td></tr> <tr> <td>Exceeding 100 and not exceeding 200</td><td>200</td></tr> <tr> <td>" 200 ditto</td><td>400</td></tr> <tr> <td>" 400 ditto</td><td>600</td></tr> <tr> <td>" 600 ditto</td><td>800</td></tr> <tr> <td>" 800 ditto</td><td>1,000</td></tr> </table>	Rs.	Rs.	Exceeding 100 and not exceeding 200	200	" 200 ditto	400	" 400 ditto	600	" 600 ditto	800	" 800 ditto	1,000	<table> <tr> <td>Rs.</td><td>As.</td></tr> <tr> <td>1</td><td>0</td></tr> <tr> <td>2</td><td>0</td></tr> <tr> <td>4</td><td>0</td></tr> <tr> <td>6</td><td>0</td></tr> <tr> <td>8</td><td>0</td></tr> </table>	Rs.	As.	1	0	2	0	4	0	6	0	8	0
Rs.	Rs.																								
Exceeding 100 and not exceeding 200	200																								
" 200 ditto	400																								
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" 600 ditto	800																								
" 800 ditto	1,000																								
Rs.	As.																								
1	0																								
2	0																								
4	0																								
6	0																								
8	0																								
<p>And for every additional four hundred Rupees, or part thereof.</p>	<table> <tr> <td>Rs.</td><td>As.</td></tr> <tr> <td>2</td><td>0</td></tr> </table>	Rs.	As.	2	0																				
Rs.	As.																								
2	0																								
<p>When the subject of the partition, consisting either wholly or in part of other property than money, and money not being part of such subject is paid, or agreed to be paid for the purpose of compensating any difference from just</p>																									

SCHEDULE A—(Continued).

Description of Instruments.	Proper Stamps.	
proportion in the partition actually made of that subject.	A Stamp of value equal to the joint value of the Stamp which would have been required had the subject of partition been actually divided with the just proportion and of the Stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or agreed to be paid, for the purpose of Compensating the difference therefrom.	
<p>55. Policy of Insurance, or other Instrument, by whatever name the same shall be called, whereby an Insurance shall be made upon any life or upon any event depending upon any life or against loss or damage by fire upon any building or property, not of the description mentioned in Article 56—</p> <p>For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupees.</p>	8 Annas.	
<p>56. Policy of Insurance of any ship, vessel, sloop, lighter, boat or the like, or of any goods or property on Board, or upon the freight of any ship, vessel, sloop, lighter, boat, or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed two per centum on the sum insured.</p>	If executed singly.	If executed in sets of two, each to be stamped
<p>If the whole sum insured shall not exceed one thousand Rupees.</p>	Annas. 8	Annas. 4
<p>If the sum insured exceed one thousand Rupees, for every thousand rupees, eight annas if executed singly; and if executed in a set of two, four annas for each number.</p>	<p>If the sum insured exceed one thousand Rupees, for every thousand rupees, eight annas if executed singly; and if executed in a set of two, four annas for each number.</p>	
<p>Where the premium shall exceed two per cent on the sum insured, if the whole sum shall not exceed one thousand rupees.</p>		
	Rs 1	As. 8

SCHEDULE A—(Continued).

Description of Instruments.	Proper Stamps.				
<p>If the sum insured exceed one thousand Rupees, for every one thousand Rupees and also for any fractional part of one thousand Rupees whereof the same shall consist, one Rupee if executed singly; and if executed in a set of two, eight annas for each number.</p>					
<p>If drawn in a set of more than two, each of the set in excess of two, to be stamped as required for each one of a set drawn in a set of two.</p>					
<p>Note.—A Letter of Cover or engagement to issue a Policy of Insurance does not require a Stamp. Provided that, unless such letter or engagement bear the full Stamp prescribed for a Policy of Insurance, no money shall be paid or payable upon it, nor shall it be filed, exhibited or recorded in any Court in India otherwise than to compel the delivery of a Policy on the prescribed Stamp.</p>					
<p>Promissory Note.—See Bill of Exchange.</p>					
<p>57. Promissory Note for the payment of any sum by instalments, or for the payment of several sums at different dates, so that the whole of the money to be paid shall be definite and certain ...</p>	<p>The same Stamp as for a Bond for the payment of the whole amount.</p>				
<p>58. Protest of any Bill of Exchange or Promissory Note for any sum of money ...</p>	<table> <tr> <th>Rupees.</th><th>Annas.</th></tr> <tr> <td>2</td><td>0</td></tr> </table>	Rupees.	Annas.	2	0
Rupees.	Annas.				
2	0				
<p>59. Protest of any Commander or Master of a vessel ...</p>	<table> <tr> <td>2</td><td>0</td></tr> </table>	2	0		
2	0				
<p>60. Protest, Notice of intention of—of any Commander or Master of a vessel ...</p>	<table> <tr> <td>0</td><td>8</td></tr> </table>	0	8		
0	8				
<p>61. Receipt or discharge given for the payment of money or in acquittal of a debt paid in money or otherwise, when the sum received, discharged, or acquitted, exceeds twenty Rupees ...</p>	<table> <tr> <td>0</td><td>1</td></tr> </table>	0	1		
0	1				
GENERAL EXEMPTIONS.					
<p>Letter sent by post acknowledging the arrival of a Currency or Promissory Note, Bill of Exchange, or any Security for money.</p>					

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.	
Receipt or discharge for the rent of land paying Revenue to Government, granted to any ryot or other actual cultivator for the rent of land cultivated by him.		
Receipt or discharge written upon any Promissory Note, Bill of Exchange, Draft, or Order for the payment of money, duly stamped.		
Receipt or discharge written upon or contained in a Mortgage Deed, or other Security, or a Deed of Conveyance, Settlement, Personal Bond, or other Instrument duly stamped, acknowledging the receipt of the consideration money therein expressed or the receipt of any principal money, interest, or annuity thereby charged.		
Receipt given for money deposited in any Bank, or in the hands of any Banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for. Provided always that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of any allotment of a share in respect of a call upon any scrip or share of or in any Joint Stock or other Company, or proposed or intended Company, which last mentioned receipt or acknowledgment, by whomsoever given, shall be liable to the Duty charged upon a receipt.		
62. Release to an Executor or Trustee from his trust ...	Ruppes. 10	Annas. 0
63. Schedule annexed or referred to in any Agreement, Lease, Bond, Deed, or other Instrument, per sheet ...	0	8
64. Settlement, Marriage Settlement, &c., namely, any Deed or Instrument, whereby any sum of money, or any Government Security or other property, real or personal, shall be settled or agreed to be settled, upon or for the benefit of any person, in any manner whatsoever	The same Stamp as prescribed by Article 12 for a Bond for the payment of the amount or value settled or agreed to be settled; or in cases in which the value shall be indeterminate, an optional Stamp—See Section XXVII of the Act.	

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.
65. Shipping order for or relating to the conveyance of any goods on board of any ship or vessel.	1 Anna.
66. WARRANT. Bonded Warehouse—	8 Annas.

GENERAL EXEMPTIONS.

Any Deed, instrument, or Writing of any kind made or executed by or on behalf of the Government by any Government Board, Commission, Court, Officer, or Agent.

NOTE—The foregoing exemption does not extend to any Deed, Instrument, or Writing executed by a Court of Wards, Local Agent, or Officer acting under the authority of any such Court or Agent, or by a Municipal Commissioner or by any Administrator-General or a Receiver appointed by any Court; neither does it extend to a sale made for the recovery of an arrear of revenue or rent, or in satisfaction of a decree or order of Court,—in any of which cases the purchaser shall be required to pay, along with the purchase money, the price of the requisite Stamp, or else provide such Stamp and shall receive from the Officer conducting the sale a Deed of Sale executed on the proper Stamp.

Renunciation of land executed by a Ryot or other actual cultivator of the land to his landlord.

Will, Testament, and the like together with a Deed merely declaratory of trust or appointment or otherwise in execution of powers, or pursuant to any previous Settlement, Deed or Will.

NOTE.—(a) Any Deed, Instrument, or Writing required by the foregoing Schedule to be stamped, may be written on one or more Stamp, if the value of the Stamps used amount to the value required by the Schedule.

(b) When of several Deeds, Instruments, or Writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In any case, however, where there are more Deeds than one, every other Deed than the principal requires the same Stamp as the principal Deed, if of value not

SCHEDULE A—(Continued).

Description of Instruments.	Proper Stamps.
exceeding eight Rupees (which shall be the maximum Stamp for Collateral Deeds), and every such collateral Deed shall specify by its contents which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed on the proper Stamp.	

SCHEDULE B. Related to Court Fees (repealed by Act XXVI of 1867)

ACT XXXVI OF 1860.

SCHEDULE A.

Specifying Deeds, Instruments, and Writings which require Stamps, and indicating the proper Stamps for those Deeds, Instruments, and writings.

Description of Instruments.	Proper Stamps.
1. Agreement, Ikrar, or any Minute or Memorandum of an Agreement; such Agreement, Minute, or Memorandum not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the party—	
If relating to matters capable of valuation and with the value stated.	The same Stamp as for a Bond for the payment of the value stated.
If for an annual or any periodical payment.	The same Stamp as for a Bond for the amount of ten years' payment, or of the total sum secured, if less.
If for the performance of any legal act, or for a purpose not restricted to, nor specifying any amount.	An optional Stamp. See Section XIV of the Act.
Agreement for loans by Bankers made for short periods upon the deposit of Notes or other Securities of the Government of India, with or without a deposit of the Acceptance or Promissory Note of the borrower, provided that no such agreement is drawn in the form of a Bond or of a Bill of Exchange or Promissory Note or in any such way as	

SCHEDULE A.—(Continued)

Description of Instruments.	Proper Stamps.
would render it a negotiable Instrument passing by endorsement, for whatever amount, in case such loan shall not exceed one month, the uniform Stamp of	2 Rupees.
And in case such loan is for a period exceeding one month, or not exceeding three months	4 Rupees.
EXEMPTIONS.	
Agreement for the hire of any labourer, Artificer, Manufacturer, or menial Servant.	
Agreement, Memorandum, or Letter made for or relating to the sale of any Goods, Wares, or Merchandize.	
2. Affidavits and solemn declarations not made for the immediate purpose of being filed, read, or used in any Court of Law, per sheet.	1 Rupee.
3. Assignments, if not of the nature specified under the heads of Conveyances and Settlements, nor specially exempted—	
In case where the Assignment is of any interest secured by an original Deed of Instrument on a Stamp of a value less than eight Rs.	The same Stamp as the original Deed.
In other cases	8 Rupees.

EXEMPTIONS.

All transfers by mere endorsement of Bills of Exchange, Promissory Notes, and other negotiable Instruments; and of Bills of Lading; and transfers by Assignment of Policies of Assurance.

4. Bills of Exchange, Letters of Credit, Drafts, Cheques on Bankers or others, Promissory Notes, Hoondees, and other orders and obligations for the payment of money, not being Bonds or Instruments, or writings, bearing the attestation of one or more witnesses—

If payable to the bearer or to order on demand, and bearing the date on which the

SCHEDULE A.—(Continued).

Description of Instruments.			Proper Stamps.			
draft or order is made, except Bank Notes payable to bearer on demand			<i>Rupces.</i>		<i>Annas.</i>	
If the sum payable does not exceed 50 Rs.			0		1	
If payable at any period not exceeding one year after date or sight, then			0		½	
			Inland and Foreign if drawn singly.		Foreign if drawn in sets of three, each to be stamped.	
			Rs.	A.	Rs.	A.
Bills	not exceeding	100	0	1	0	1
Above	100 and not exceeding	250	0	3	0	1
"	250 ditto	500	0	6	0	2
"	500 ditto	1,000	0	12	0	1
"	1,000 ditto	2,500	1	8	0	8
"	2,500 ditto	5,000	3	0	1	0
"	5,000 ditto	10,000	6	0	2	0
"	10,000 ditto	20,000	12	0	4	0
"	20,000 ditto	30,000	18	0	6	0
"	30,000 and upwards	...	24	0	8	0
5. Any of the Instruments described in No. 4, payable at a period exceeding one year after date or sight.			The same Stamp as for Bonds for the payment of the same amount.			
6. Bills of Lading of or for any Goods, Merchandise, or effects to be exported			4 Annas for each part of every set.			
7. Bills of Sale-- See Conveyance and Mortgage.						
8. All Bonds or other obligations for the payment of any definite or certain sum of money not otherwise charged for or expressly exempted from the payment of Stamp Duty in this Schedule--						
			Rs.	<i>Rupces.</i>	<i>Annas.</i>	
If for any sum not exceeding			50	0	4	
Above	50 and not exceeding	100		0	8	
"	100 ditto	200		1	0	
"	200 ditto	300		2	0	

SCHEDULE A.—(Continued).

Description of Instrument.				Proper Stamps.	
	Rs.		Rs.	Rs.	A.
Above	300 and not exceeding	500		4	0
"	500	ditto	700	5	0
"	700	ditto	1,000	6	0
"	1,000	ditto	2,000	10	0
"	2,000	ditto	3,000	15	0
"	3,000	ditto	5,000	25	0
"	5,000	ditto	10,000	35	0
"	10,000	ditto	20,000	60	0
"	20,000	ditto	40,000	100	0
"	40,000	ditto	60,000	125	0
"	60,000	ditto	80,000	150	0
"	80,000	ditto	1,00,000	200	0
And for every further part of a lac,				100	0
And for every further full lac				200	0
9. Bonds or other obligations, concerning respondentia and bottomry				The same stamp as for a common money Bond for the like amount.	
10. Bonds or other obligations given as security for the transfer of Government Securities or Stock of any public company or for the delivery or accounting for any matter or thing capable of being valued				The same stamp as for a bond for the payment of the amount engaged to be paid or accounted for, or of the value of the thing to be delivered or transferred.	
11. Bonds or other obligations for an annual or any periodical payment, not being interest upon any periodical sum secured by the Bond, whether for a fixed or for an indefinite period				The same stamp as for a Bond for the payment of a sum equal to ten times the yearly payment, or of the total sum secured, if less.	
12. Bonds or other obligations when the amount of the money to be secured is not specified				An optional Stamp—See Section XIV of the Act.	

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.
When the amount is limited to a certain sum	The same Stamp as for a Bond for the payment of such limited sum.
13. Bonds or other obligations for the due execution of an office, or work taken by individuals, and all other Bonds not otherwise specially provided for	An optional Stamp—See Section XIV of the Act.
14. Bonds or other obligations taken as Collateral security with some Deed or Instrument executed on the Stamp prescribed for Conveyances or Money Bonds, or as security for the performance of any other contract, covenant, or agreement not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand.	The same Stamp as the Deed, Instrument, Contract, Covenant, or Agreement, if of value not exceeding eight Rupees; otherwise a Stamp of eight rupees.
15. Security Bonds or other obligations which may be taken by or by order of any Court, Collector, or other Judicial or Revenue Authority, also Razeenamahs, Sooluhnamahs, and Ruffanamahs, filed in any suit pending in a Court of Justice.	To be charged as specified, and prescribed in Schedule B.
16. Charter-parties, or any agreement or contract for the Charter of any Sea-going Ship or Vessel, or any memorandum, letter, or other writing between the Captain, Master, or Owner of any such Ship or Vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such Ship or Vessel	2 Rupees.
17. Composition Deeds or other Instruments of composition between a debtor or debtors and his, her, or their creditors	8 Rupees.
18. Contract and deeds, if not otherwise specially provided for	As agreements.
19. Conveyances or deeds or Instruments of any kind or description whatsoever, executed for the sale or transfer.	

SCHEDULE A—(Continued)

Description of Instruments.				Proper Stamps.	
for a consideration, of any lands tenements, rents, annuities, or other property, real or personal, moveable or immoveable, or of any right, title, or claim to or upon, or interest in, any lands, houses, rent, annuities, or other property, that is to say, for or in respect of the principal or only Deed, Instrument, or Writing whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person by his, her, or other directions—					
When the purchase or consideration money therein expressed or denoted shall not exceed one hundred Rupees.				<i>Rupees.</i>	<i>Annas.</i>
	Rs.	Rs.		1	0
Above 100 and not exceeding 200				2	0
" 200 ditto 400				4	0
" 400 ditto 800				8	0
" 800 ditto 1,200				12	0
" 1,200 ditto 2,000				20	0
" 2,000 ditto 3,000				30	0
" 3,000 ditto 4,000				40	0
" 4,000 ditto 5,000				50	0
" 5,000 ditto 7,500				75	0
" 7,500 ditto 10,000				100	0
" 10,000 ditto 20,000				150	0
" 20,000 ditto 40,000				200	0
" 40,000 ditto 60,000				300	0
" 60,000 ditto 80,000				400	0
" 80,000 ditto 1,00,000				500	0
and for every further, ...		50,000		200	0
Or part thereof, ...		...		100	0

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps				
Conveyance when the consideration is annuity.	The same Stamp as for a Conveyance when the purchase money is equal to ten times the annuity.				
Conveyances of any kind whatever not otherwise charged, if the value of the property conveyed or of the consideration for the Conveyance be stated or appear on the face of the Conveyance.	The same duty as would be charged if a Consideration in money equal to such value were expressed in the Conveyance as the consideration thereof. 50 Rupees.				
If no value appear on the face of the Conveyance.					
<p>Note.—When of several Deeds, Instruments, or Writings a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In all cases, however, where there are more Deeds than one, every other Deed than the principal requires the same Stamp as the principal Deed, if of value not exceeding eight Rupees (which shall be the maximum Stamp for Collateral Deeds), and all such Collateral Deeds shall specify by their contents which other is the principal Deed by which the conveyance has been effected, certifying that it is executed on the proper Stamp.</p>					
Transfers of the shares of any Banking Corporation or any Joint Stock Company, by endorsement or otherwise, when the full nominal value of the share so transferred does not exceed 100 Rupees, per share.	<table> <tr> <th>Rupees</th><th>Annas.</th></tr> <tr> <td>0</td><td>1</td></tr> </table>	Rupees	Annas.	0	1
Rupees	Annas.				
0	1				
When the value exceeds 100 Rupees and not 200 Rupees.	<table> <tr> <td>0</td><td>8</td></tr> </table>	0	8		
0	8				
When the value exceeds 200 Rupees and not 300 Rupees.	<table> <tr> <td>0</td><td>12</td></tr> </table>	0	12		
0	12				
When the value exceeds 300 Rupees and not 400 Rupees.	<table> <tr> <td>1</td><td>0</td></tr> </table>	1	0		
1	0				
<p>And for every additional value of 100 Rs. a further Duty of 4 annas, and for the transfer of every quarter or half of any such share, a corresponding rate of Duty.</p>					

SCHEDULE A.—(Continued).

Description of Instruments.	Proper Stamps.
EXEMPTIONS.	
All transfers of subscription to any of the Government Loans or other Government Securities.	
20. CO-PARTNERSHIP.—Deeds or other Instruments of	<i>Rupees. Annas.</i> 8 0
21. COPIES.—Copy or Extract of any Deed or Instrument attested to be a true Copy or Extract, and furnished for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby	The same duty as prescribed for the original Deed by this Act.
22. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet	<i>Rupees. Annas.</i> 0 8
23. Copy or Extract of any Deed, Instrument, Schedule, Receipt, or other matter annexed to any agreement, contract, bond, deed, or other instruments, per sheet	0 8
24. Copies authenticated of any records, letters, accounts, statements, reports, or other writings, furnished to individuals from any of the Public Offices of Government, per sheet	0 8
For copies of Revenue and Judicial Papers to be given from the Courts of Justice, Revenue Kutcheries, &c.	See Schedule B.
EXEMPTIONS.	
Copies of papers which Public Officers are directed by any law or general regulation to make, require, or furnish, for which Stamps are not specially required by this Schedule.	
25. Deeds of gift and dower whether to take effect on the instant, or at a future period, determinate or indeterminate	The same Stamp as for Conveyances.
26. Deeds of any kind not otherwise particularized in this Schedule	As Agreements.

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.				
27. EXCHANGES.—Any Deed or Instrument whereby any real property shall be conveyed or surrendered in exchange for other property	The same Stamps as for Conveyance.				
28. Engagements to cultivate, produce, provide, or derive any article of commerce in consideration of advance made	Shall be charged on the amount advanced at the rate of Bonds.				
29. LEASES.—Any lease made in perpetuity or for a term of years, or period determinable within one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent	The same Stamp as for a Conveyance or Deed of Sale for a sum of the amount of such consideration.				
30. Any lease of lands, houses, or other real property at a rent, without any payment of any sum of money by way of fine or premium—	<table> <tr> <th data-bbox="607 833 726 992">When the lease is for a period not exceeding one year.</th><th data-bbox="780 833 902 967">When the lease is for a period exceeding one year.</th></tr> <tr> <td data-bbox="607 1018 700 1076">Rs. A. 0 4</td><td data-bbox="780 1018 873 1076">Rs. A. 0 8</td></tr> </table>	When the lease is for a period not exceeding one year.	When the lease is for a period exceeding one year.	Rs. A. 0 4	Rs. A. 0 8
When the lease is for a period not exceeding one year.	When the lease is for a period exceeding one year.				
Rs. A. 0 4	Rs. A. 0 8				
Where the rent calculated for a whole year shall not exceed 24 Rupees					
Rs.	Rs.				
Exceeding 24 but not exceeding	50				
" 50 ditto	100				
" 100 ditto	250				
" 250 ditto	500				
" 500 ditto	1,000				
" 1,000 ditto	2,000				
" 2,000 ditto	4,000				
" 4,000 ditto	6,000				
" 6,000 ditto	10,000				
" 10,000 ditto	25,000				
" 25,000 ditto	50,000				
And for every additional 25,000 or part thereof,	<table> <tr> <td data-bbox="607 1538 700 1564">100 0</td><td data-bbox="780 1538 873 1564">200 0</td></tr> </table>	100 0	200 0		
100 0	200 0				

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.				
31. Any lease of lands, houses, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same Stamp as for a lease for a period not exceeding one year.				
32. Any lease of lands, houses, or other real property, stipulating for a rent, and granted in consideration of a fine or premium.	A Stamp of value equal to the joint values of the Stamps for a Conveyance in consideration of the fine, and a lease for the rent.				
33. The Counterpart of any Lease, or a Kuboolent or the like	The same Stamp as for the lease.				
EXEMPTION.					
All Leases, Pottahs, and Kuboolents, executed and exchanged with ryots and other actual cultivators of the soil, provided that no fine or premium be paid and no Security Bonds executed as part of the same transactions,					
(For Madras and Bombay.)					
Every lease and its counterpart (Pottah and Kuboolent) or other engagement contracted between landlord and tenant, relative to lands subject to the payment of Revenue to Government.					
34. Letters, or powers of Attorney, Mooktarnamahs. &c., not being of the kinds provided for in Schedule B--					
For the performance of any special act or acts, or of the acts connected with any one particular suit, case, or transaction	<table><tr><td>Rupees.</td><td>Annas.</td></tr><tr><td>0</td><td>8</td></tr></table>	Rupees.	Annas.	0	8
Rupees.	Annas.				
0	8				
General, that is not restricted as above	<table><tr><td>4</td><td>0</td></tr></table>	4	0		
4	0				
Warrant of Attorney to confess judgment, or Cognovit, unless taken as collateral security for the payment of any sum of money secured by another instrument stamped with an <i>ad valorem</i> Stamp under this Act.	The same Stamp as for a Bond.				
If given as such collateral security as above mentioned					
	5 Rupees.				

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.
NOTE.—For Wakalutnamahs, Mookutnamahs, and other powers required to be filed for the conduct of suits, regular or summary, or proceedings of any kind pending before the Courts of Judicature or before the Revenue Authorities	See Schedule B.
35. Letters of license from creditors to debtors	8 Rupees.
36. MORTGAGES—Any deed of mortgage or of conditional sale with or without possession given, of or for any lands, estates, or property, real or personal, intended as a security for money due or to be lent thereupon; also any deed or contract accompanied with a deposit of title-deeds to any property, where the same may be made as security for payment of money due or lent at the time.	The same Stamp as for a Bond for the payment of the amount due or lent.
37. Re-conveyance of mortgaged property	The Stamp as for Assignments.
38. Release of an equity of redemption	The same Stamp as for Conveyances.
39. Deeds of mortgage, or the like given as security for the transfer of Government Securities or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued.	The same Stamp as for a Bond for the payment of the total amount assured, or for the <i>bona fide</i> value.
40. Deed of mortgage given for the security of annuities of an indefinite period, such as life annuities	The same Stamp as for ten times the annual payment.
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum,	The same Stamp as for deeds of mortgage of such limited sum.
Where the total amount secured by the mortgage is unlimited	An optional Stamp—See Section XIV of the Act.
Where a Bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as a collateral	

SCHEDULE—(Continued).

Description of Instruments.	Proper Stamps.																						
security to some other transaction in which an instrument requiring a Stamp has been executed,	The same Stamp as for the Bond or other Instrument, if of value not exceeding eight Rupees; otherwise a Stamp of eight Rupees.																						
Where there are more deeds than one required to execute the mortgage in the manner desired by the parties, then for every other Deed than the principal Deed, provided the original Deed has been duly stamped,	The same Stamp as for the principal Deed, if of value not exceeding eight Rupees; in other cases a Stamp of eight Rupees.																						
41. Mortgages, assignments, or, acknowledgments granted for loans or advances made on the deposit of Government Securities, bullion, plate, jewels or other goods	The same Stamp as for Promissory Notes.																						
42. Partitions by private agreement or made by Public Officers, of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, for every such sharer's copy of the deed of partition—																							
When the sharer's portion does not exceed one hundred Rupees in value	<table> <tr> <th data-bbox="619 942 705 972">Rupees.</th><th data-bbox="731 942 817 972">Annas.</th></tr> <tr> <td data-bbox="669 997 684 1023">0</td><td data-bbox="760 997 775 1023">8</td></tr> </table>	Rupees.	Annas.	0	8																		
Rupees.	Annas.																						
0	8																						
<table> <tr> <th data-bbox="254 1051 299 1081">Rs.</th><th data-bbox="534 1051 579 1081">Rs.</th></tr> <tr> <td data-bbox="114 1090 239 1120">Exceeding 100</td><td data-bbox="534 1090 579 1120">and not exceeding 200</td></tr> <tr> <td data-bbox="177 1145 192 1170">„</td><td data-bbox="254 1145 425 1170">200 ditto 400</td></tr> <tr> <td data-bbox="177 1196 192 1221">„</td><td data-bbox="254 1196 425 1221">400 ditto 600</td></tr> <tr> <td data-bbox="177 1246 192 1271">„</td><td data-bbox="254 1246 425 1271">600 ditto 800</td></tr> <tr> <td data-bbox="177 1296 192 1322">„</td><td data-bbox="254 1296 425 1322">800 ditto 1,000</td></tr> </table>	Rs.	Rs.	Exceeding 100	and not exceeding 200	„	200 ditto 400	„	400 ditto 600	„	600 ditto 800	„	800 ditto 1,000	<table> <tr> <td data-bbox="669 1090 684 1115">1</td><td data-bbox="760 1090 775 1115">0</td></tr> <tr> <td data-bbox="669 1145 684 1170">2</td><td data-bbox="760 1145 775 1170">0</td></tr> <tr> <td data-bbox="669 1196 684 1221">4</td><td data-bbox="760 1196 775 1221">0</td></tr> <tr> <td data-bbox="669 1246 684 1271">6</td><td data-bbox="760 1246 775 1271">0</td></tr> <tr> <td data-bbox="669 1296 684 1322">8</td><td data-bbox="760 1296 775 1322">0</td></tr> </table>	1	0	2	0	4	0	6	0	8	0
Rs.	Rs.																						
Exceeding 100	and not exceeding 200																						
„	200 ditto 400																						
„	400 ditto 600																						
„	600 ditto 800																						
„	800 ditto 1,000																						
1	0																						
2	0																						
4	0																						
6	0																						
8	0																						
And for every additional four hundred Rupees, or part thereof	<table> <tr> <td data-bbox="669 1379 684 1404">2</td><td data-bbox="760 1379 775 1404">0</td></tr> </table>	2	0																				
2	0																						
When the subject of the partition, consisting either wholly or in part of other property than money, any money, not being part of such subject, is paid, or agreed to be paid for the purpose of																							

SCHEDULE A—(Continued).

Description of Instruments.	Proper Stamps.
compensating any difference from just proportion in the partition actually made of that subject.	A Stamp of value equal to the joint values of the Stamp which would have been required had the subject of partition been actually divided with the just proportion, and of the Stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or agreed to be paid, for the purpose of compensating the difference therefrom.
<p>43. Policy of Assurance or Insurance, or other Instrument by whatever name the same shall be called, whereby an Insurance shall be made upon any life or lives, or upon any event depending upon any life or lives—</p> <p>For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupees.</p>	<p><i>Rupees. Annas.</i></p> <p>0 8</p>
<p>44. Policy of Insurance of any ship, vessel, sloop, lighter, boat, or the like, or of any goods or property on board or upon the freight of any ship, vessel, sloop, lighter, boat, or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed two per centum on the sum insured if the whole sum insured shall not exceed one thousand Rupees ...</p>	<p>0 8</p>
<p>If the sum insured exceed one thousand Rupees, then for every one thousand Rupees, and also for any fractional part of one thousand Rupees whereof the same shall consist. ...</p>	<p>0 8</p>
<p>Where the premium shall exceed two per cent on the sum insured, if the whole sum shall not exceed one thousand Rupees. ...</p>	<p>1 0</p>
<p>If the sum insured exceeds one thousand Rupees, then for every one thousand Rupees and also for any fractional part of one thousand Rupees whereof the same shall consist. ...</p>	<p>1 0</p>

SCHEDULE A.—(*Continued*).

c

Description of Instrument.	Proper Stamps.
Promissory Notes	See Bills of Exchange.
45. Promissory Notes for the payment of any sum by instalments, that is Kistbundies, or for the payment of several sums at different dates, so that the whole of the money, to be paid shall be definite and certain.	The same Stamp as for a Bond for the payment of the whole amount.
46. Protest of any Bill of Exchange or Promissory Note for any sum of money, or any Notarial Act not otherwise charged or exempted in this Schedule,	<p><i>Rupees. Annas.</i></p> <p>2 0</p>
47. Receipts or discharges given for the payment of money or in acquittal of a debt paid in money or otherwise, when the sum received, discharged or acquitted, amounts to ten Rupees and does not exceed fifty Rupees	<p>0 ½</p>
If the sum exceeds fifty Rupees	<p>0 1</p>
EXEMPTIONS.	
<i>(For the Presidency of Bengal).</i>	
Receipts or discharges with respect to the rent of land paying Revenue to Government, granted to any ryot or other actual cultivator for the Rent of land tilled by him.	
<i>(For the Presidencies of Madras and Bombay.)</i>	
Receipts or discharges with respect to the rent of land paying Revenue to Government granted to any tenant for the rent paid by him.	
GENERAL EXEMPTIONS.	
Receipts or discharges written upon Promissory Notes, Bills of Exchange, Drafts, or Orders for the payment of money, duly stamped.	
Letters sent by the post acknowledging the arrival of any Promissory Notes, Bills of Exchange, or other securities for money.	

SCHEDULE A.—(Continued).

Description of Instrument.	Proper Stamps.
<p>Receipts or discharges written upon or contained in any Mortgage Deed, or other security or any Deed of Conveyance, Settlement, Personal Bond, or other Instrument duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby charged.</p>	
<p>Receipts given for money deposited in any Bank, or in the hands of any Banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for. Provided always that this exemption shall not extend to receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares, in respect of calls upon any scrip or shares of or in any Joint Stock or other Company, or proposed or intended Company, which such last-mentioned receipts or acknowledgments, by whomsoever given, shall be liable to the Duty charged upon receipts.</p>	
<p>48. Schedules referred to in an Agreement, Lease, Bond, Deed, or other Instrument, for every thousand words, or part thereof</p>	<p>10 Rupees.</p> <p>The same Stamp as for a Bond for the payment of the amount or value settled or agreed to be settled; or in cases in which the value shall be indeterminate an optional Stamp—See Section XIV of the Act.</p>
<p>49. Settlements, Marriage Settlements, &c., namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons, in any manner whatsoever.</p>	

EXEMPTIONS.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers, or

SCHEDULE A.—(*Continued*).

1

Description of Instrument.	Proper Stamps.
pursuant to any previous Settlement, Deed, or Will,	
GENERAL EXEMPTION AND RULE	
Deed, Instruments, and Writings of any kind, in which Government, or any Board, Commission, Court, or Public Officer may, in a public capacity, be a party, do not require Stamps.	
NOTE.—The foregoing exemption does not extend to Deeds, Instruments, and Writings executed to or by the Court of Wards; Local Agents, or Officers acting under their authority, or to or by any Administrator General; neither does it extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees or orders of Court, in which cases the purchasers shall be required to pay, along with the purchase-money the price of the requisite Stamp, or else provide such Stamp, and shall receive from the Officer conducting the sale a Deed of Sale (Bynamah) executed on the proper Stamp.	
Any Deed, Instrument, or Writing required by the foregoing Schedule to be Stamped, may be written on one or more Stamps if the value of the Stamps used amounts to the value required by the Schedule.	
Deeds for Securing gifts or dispositions made by previous Settlements, Deeds, or Wills.	
Schedule B—Contains specification of Duties chargeable on Lawpapers.	

* Every facility should be given to persons who may engross writings on a stamp of insufficient value, within the first three months from the time of Act XXXVI of 1860 coming into operation, to amend their error without penalty, and no prosecution should be permitted against any person for any breach of the law committed within the same period, if there be any ground for presuming that he acted inadvertently and without knowledge of the law.—(Government of India to the Government of Bombay, 13th October 1860, para 2).

BENGAL REGULATIONS.

REGULATION X of 1829.

(In force from 16th June, 1929 to 1st October, 1860).

SCHEDULE A.

Schedule (A) referred to in Section III. of Regulation X of 1829, containing a specification of the Duties chargeable on Instruments of Conveyance, Contract, Obligation, and Security for money, and on deeds in general.

1. Agreement, ikrar, or any minute, or memorandum of an Agreement concerning any matter or thing, not otherwise charged in this schedule, not expressly exempted from all stamp duty, whether the same be only evidence of a contract or obligatory upon the party—if relating to matters capable of valuation, and with the value stated,

To be charged as herein under prescribed for bonds of the same amount.

2. Agreement for a monthly or annual payment,

To be estimated at the amount of ten years' payment, or of the total sum secured, if less.

3. Agreement to perform any legal act or for a purpose not restricted to, or specifying any amount.

To be executed on such stamp as the parties may determine, but no recovery can be made on the instrument in any Court of Justice of a larger amount than may be recovered by the stamp at the rate prescribed in the schedule for bonds.

EXEMPTIONS.

Memorandum of agreement for the hire of labour.

Ditto, all agreements carried on by letter through the public dawk between merchants and other persons.

4. Bills of exchange, drafts, promissory notes, hoondces, teeps, burats, and other orders or obligations for the payment of money, payment (if payable within the Provinces subordinate to this Presidency) at sight, or on demand, or at the periods specified below (not being deeds, instruments, or writings, bearing the attestation of one or more witnesses) together with all bills of exchange payable out of the said provinces at whatever date.

SCHEDULE A.—(Continued).

				At sight or on demand or not exceeding three months, to be charged.		Exceeding three months after date and not exceeding one year to be charged.	
				Sa. Rs. A.		Sa. Rs. A.	
If for a sum of money not exceeding above	25 Rs. and not exceeding	25 Rs.	0 1	0 2	0 2	0 2	0 2
"	50 "	50	" 0 2	0 4	0 4	0 4	0 4
"	100 "	100	" 0 4	0 8	0 8	0 8	0 8
"	200 "	200	" 0 8	1 0	1 0	1 0	1 0
"	400 "	400	" 1 0	1 8	1 8	1 8	1 8
"	800 "	800	" 1 8	2 0	2 0	2 0	2 0
"	1,600 "	1,600	" 2 0	2 8	2 8	2 8	2 8
"	3,000 "	3,000	" 2 8	4 0	4 0	4 0	4 0
"	5,000 "	5,000	" 4 0	6 0	6 0	6 0	6 0
"	10,000 "	10,000	" 6 0	8 0	8 0	8 0	8 0
"	20,000 "	20,000	" 8 0	12 0	12 0	12 0	12 0
"	30,000 "	30,000	" 12 0	16 0	16 0	16 0	16 0
"	50,000 "	50,000	" 16 0	20 0	20 0	20 0	20 0
"	1,00,000 "	1,00,000	" 20 0	25 0	25 0	25 0	25 0

5. Bills of exchange, promissory notes, &c., intended to be re-issued. { Shall be charged as prescribed for promissory notes payable at a date exceeding three months.

6. Bills of exchange, promissory notes, &c., of date exceeding one year. To be charged as bonds.

NOTE.—The Governor-General in Council reserves to himself the power of admitting any bank or company to compound for the stamp duty chargeable on the promissory notes issued by it. Notice of such arrangements shall be given in the Government Gazette.

EXEMPTIONS.

Bills of exchange or hundees for any sum of money if drawn *bona fide* from any place distant more than 100 miles from the place where the same are made payable, and not negotiated after acceptance, also foreign bills of exchange drawn in sets.

Provided, however, that if any bill or bills of exchange drawn in any part of the Continent of India, and made payable in the provinces subject to this presidency, shall be negotiated therein after acceptance, or be in any way transferred after acceptance to a third party, other than the acceptor and the payee of such Bill or Bills, the exemption shall not hold in respect to any such negotiated Bill or Bills, unless the same shall be taken to be stamped prior to such negotiation, or unless there be affixed to each bill a copy of the same executed on paper stamped with the stamp to which such bill is declared liable in this schedule.

EXEMPTION (CONTINUED).

SCHEDULE A.—(Continued).

Bills of exchange drawn and promissory notes, &c., issued by Government officers authorized to draw bills upon the Government treasuries, or to issue promissory notes, or other acknowledgment on account of Government.

All drafts or orders for the payment of any sum of money to the bearer on demand, drawn upon any bank, banker, or agent, residing within twenty miles of the place where such draft or order shall be issued, such place being specified on the face of the draft.

BILLS OF SALE.—See Conveyance and Mortgage.

7. Bonds, munsooks, and other attested obligations for the payment of money, also promissory notes and bills of exchange, teeps, burats, and the like, of date exceeding one year.

				Sa. Rs.A.	
If for any sum not exceeding				Sa. 25 Rs.	0 2
	Above 25 Rs. and not exceeding			50 ..	0 4
"	50	"	ditto ...	100 ..	0 8
"	100	"	ditto ...	200 ..	1 0
"	200	"	ditto ...	300 ..	2 0
"	300	"	ditto ...	500 ..	4 0
"	500	"	ditto ...	1,000 ..	6 0
"	1,000	"	ditto ...	2,000 ..	10 0
"	2,000	"	ditto ...	3,000 ..	16 0
"	3,000	"	ditto ...	5,000 ..	20 0
"	5,000	"	ditto ...	10,000 ..	32 0
"	10,000	"	ditto ...	20,000 ..	40 0
"	20,000	"	ditto ...	50,000 ..	64 0
"	50,000	"	ditto ...	75,000 ..	70 0
"	75,000	"	ditto ...	1,00,000 ..	80 0
"	1,00,000	"	ditto ...	1,50,000 ..	100 0
"	1,50,000	"	ditto ...	2,00,000 ..	120 0
"	2,00,000	"	ditto ...		150 0

and a further duty of 100 rupees for every sum of 1,00,000 in excess of the said amount of 2,00,000 of rupees.

8. BONDS, given as security for the transfer of Government securities, or for the payment of an annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued,

Shall be charged at the rate of the amount engaged to be paid or accounted for, or at the value of the thing to be delivered or transferred.

9. BONDS, for annuities for an indefinite period, such as life annuities, and the like.

Shall be charged at the rate of ten times the yearly payment.

SCHEDULE A.—(Continued).

10. BONDS, when the amount of the money to be secured, or ultimately recovered, shall be uncertain and unlimited.

May be executed on such stamp as the party may please, but no recovery shall be made thereon in any Court of Justice of a larger amount than is covered by the stamp.

11. BONDS, for the due execution of an office, or work, mochulkas, and the like taken by individuals, and all other bonds not otherwise charged or exempted from duty.

On optional stamp as above, with like condition.

12. When the amount is limited to a certain sum,

The same as on a bond for such limited sum.

EXEMPTIONS.

Arbitration bonds.

Bonds, given to or by the officers of Government on account of any matter, or thing of, or belonging to the Government in its political or territorial capacity.

13. SECURITY BONDS, which may be taken by or by order of any Court, Collector, or other judicial or revenue authority, also razeenamahs, sooluhnamahs, and ruffahnamahs, filed in any suit pending in a Court of Justice.

To be charged as specified and prescribed in schedule B for law papers.

14. CHARTER PARTIES or any AGREEMENT of CONTRACT for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master or owner of any ship or vessel and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel.

If the amount payable under the deed exceeds 1,000 rupees, 8 rupees and if less than 1,000 rupees according to the scale prescribed for bonds.

EXEMPTIONS.

Charter parties of ships or vessels taken up by Government for the conveyance of troops or military stores, or for other political purposes.

15. Contracts and deeds, if not otherwise charged or exempted from duty ...

As agreements.

16. Co-partnership, deeds, of ...

Rs. A.
... 8 0

17. Composition deeds, or other instruments of composition between a debtor or debtors and his, her, or their creditors.

8 0

SCHEDULE A.—(Continued).

18. CONVEYANCES (KUBALAS, BYNAMAS, HIBANAMAS) or deeds, or instruments of any kind or description whatsoever executed for the sale or transfer for a consideration of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim to, or upon any lands, houses rents, annuities, or other property, that is to say, for or in respect of the principal or only deed, instrument, or writing whereby the property sold shall be conveyed to or otherwise vested in the purchaser, or purchasers, or to some other person, by his or their directions.

When the purchase or consideration-money				Sa. Rs. A.		
therein expressed or denoted shall not exceed				50 Rupees.	0	8
Above	50 Rs. and not exceeding...			100	"	1 0
"	100 "	ditto	...	200	"	2 0
"	200 "	ditto	...	500	"	4 0
"	500 "	ditto	...	1,000	"	8 0
"	1,000 "	ditto	...	2,000	"	12 0
"	2,000 "	ditto	...	3,000	"	16 0
"	3,000 "	ditto	...	5,000	"	20 0
"	5,000 "	ditto	...	8,000	"	32 0
"	8,000 "	ditto	...	12,000	"	40 0
"	12,000 "	ditto	...	20,000	"	50 0
"	20,000 "	ditto	...	30,000	"	64 0
"	30,000 "	ditto	...	50,000	"	80 0
"	50,000 "	ditto	...	1,00,000	"	100 0
"	1,00,000 "	ditto	...	2,00,000	"	150 0
And for every further Lack of Rupees beyond				2,00,000	"	100 0

Note.—When, of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to engross the same on paper, parchment, vellum, or the like stamped for the prescribed *ad valorem* duty.

19. Provided, however, that in all cases where there are more deeds than one, all other deeds, than the principal shall be charged with a like stamp to the principal deed if of value not exceeding 8 rupees, (which sum shall be the maximum duty on collateral deeds,) and all such collateral deeds shall specify by their contents; which other is the principal deed by which the conveyance has been effected, certifying that it is executed in the manner and on material stamped as required.

EXEMPTIONS.

All grants, leases, sales, or the like, wherein Government, in its political or territorial capacity, is a party.

Note.—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of Court, in which cases the purchasers shall be required to pay the prescribed duty along with the purchase money, and shall receive from the officer conducting the sale, a deed of sale (byenama) executed on paper impressed with a corresponding stamp.

SCHEDULE A.—(Continued).

All transfers of subscriptions to any of the Government loans, or other Government securities, also of Bank Shares.

20. COPIES—copy, or counterpart of any deed or instrument attested to be a true copy and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, ...

The same duty as prescribed for the original deed by this Regulation.

21. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet, ...

Sa. Rs. A.
0 8

22. Copy or extract of any deed, instrument, schedule, receipt, or other matter annexed to any agreement, contract, bond, deed, or other instrument, per sheet, ...

0 8

23. Authenticated copies of any records, letters, accounts, statements, reports, or other writings furnished to individuals from any of the public offices of Government, shall be written on paper of the size and description now used for the purpose, and called copy paper at the stamp office, and of the value for each and every sheet of, ...

0 8

For copies of judicial papers to be given from the Courts of Justice, Revenue Kucheries, &c.—See schedule B.

EXEMPTIONS.

Copies made for the private use only of any person having the custody of the Original Instruments, or of his or her Attorney or Solicitor, and copies of deeds &c., retained in Public Offices on returning the originals.

Copies of papers which public officers are directed by any general Regulation to make, require, or furnish, not being specially declared chargeable with stamp duty.

24. Deeds of any kind, not otherwise particularized in this schedule. ... As agreements.—

25. EXCHANGES—Any deed, whereby any real property shall be conveyed, or surrendered in exchange for other property.

SCHEDULE A.—(Continued).

If no sum of money shall be paid or agreed to be paid for equality of exchange,

Sa. Rs. A.

8 0

26. And if any sum of money be paid or agreed to be paid for equality of exchange,

The same *ad valorem* duty as for a conveyance for such sum.

27. Engagement to cultivate, provide, or deliver indigo plant, or to produce, manufacture, provide, or deliver any other articles of commerce, in consideration of advance made,

Shall be charged on the amount advanced at the rate of bonds.

28. LEASES.—Any lease made in perpetuity, or for a term of years or period determinable, with one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent,

The same duty as for a conveyance or sale for a sum of the amount of such consideration.

29. Any lease of lands, houses, or other real property at a monthly or yearly rent, without any payment of any sum of money by way of fine or premium.

For a period
not exceed-
ing one year.

For a period
exceeding
one year.

Sa. Rs. A. Sa. Rs. A.

Where the rent calculated for a whole

year shall exceed 12 Rs. but not exceed	24 Rs.	0 4	0 8
Exceeding 24 Rs. but not exceeding	50	0 8	0 12
" 50 "	ditto 100	0 12	1 0
" 100 "	ditto 250	1 0	2 0
" 250 "	ditto 500	2 0	4 0
" 500 "	ditto 1,000	4 0	8 0
" 1,000 "	ditto 2,000	8 0	12 0
" 2,000 "	ditto 4,000	12 0	16 0
" 4,000 "	ditto 6,000	16 0	20 0
" 6,000 "	ditto 10,000	20 0	32 0
" 10,000 "	ditto 50,000	32 0	64 0
Above 50,000 "	ditto ...	64 0	80 0

30. Any lease of lands, houses, or other real property stipulating for a yearly rent, and granted in consideration of a fine or premium,

Shall be charged with a duty equal to both *ad valorem* duties above provided, *viz.*, both as lease and conveyance.

31. The counterpart of any lease, *i.e.* the *kubooleut*, or the like,

Shall be executed on paper, vellum, bearing the same stamp as the original.

SCHEDULE A.—(*Continued*).

EXEMPTIONS.

All leases, where the annual rent shall not exceed 12 rupees.

All leases, or pottahs given by authority of Government, or of the Board of Revenue, with their counterparts, and all security-bonds, executed as part of the same transactions; also all leases, *viz.* pottahs and kubooleuts, executed and exchanged with ryots, and other actual cultivators of the soil.

Note.—Leases, pottahs, kubooleuts, or other instruments of contract between zemindars, talookdars, or other holders or proprietors of land, whether subject to the payment of revenue to Government or otherwise, or between farmers, kutkenadars, ijaradars, or other tenants, on one hand, and any other talookdar, kutkenadar, ijaradar, or other leaseholder intermediate between the ryots or actual cultivators and the sudder malgoozar or lakherajdar, on the other

Shall be written on stamped paper of the value above prescribed for leases.

Letters, or power-of-attorney, mook-tarnamahs, &c., *viz.*

32. Powers to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case, or transaction, ...

Sa. Rs. A.

0 8

33. General, *i.e.*, not restricted as above to one case, suit, or transaction,

4 0

EXEMPTIONS.

Wakalutnamahs, mooktarnamahs, and other powers required to be filed for the conduct of suits pending before the Native Courts of Judicature or before the Revenue Authorities, for the rule regarding which, see Schedule B. "Law papers."

34. Letters of license from creditors to debtors,

Sa. Rs. A.
8 0

35. Mortgage, any deed of mortgage or conditional sale, kutkubala, bye bilvufa, bhog-bhunduk, &c, with or without possession given, of or for any lands estates, or property, real or personal, intended as a security for money due, or to be lent thereupon; also, any deed or contract accompanied with a deposit of title-deeds to any property, where the same may be made as a security for payment of money due or lent at the time,

Shall be charged after the same manner and at the same rates as if in lieu of such deed of mortgage or the like, a bond had been taken for the sum due or lent at the time.

SCHEDULE A.—(Continued).

36. Deeds of mortgage, or the like, given as security for the transfer of Government securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued.

Shall be charged at the above rate for the total amount assured, or for *bona fide* value.

37. Deeds of mortgage given for the security of annuities for an indefinite period, sued as life annuities and the like.

Shall be charged at the rate of ten times the annual payment.

38. Where the total amount secured by such mortgage is unlimited.

The deed may be executed on such stamp as the party may choose, but no further sum can be recovered thereon, than may be covered by the stamp.

39. Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum.

At the rate of such limitation.

Note.—When a bond may have been already taken for the amount secured, or where, from any other cause, the mortgage shall act merely as a collateral security to some other transaction already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage,

The deed to be charged as a collateral deed. See note after Conveyance.

Likewise, in case of there being more deeds than one required to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction.

Shall be charged as prescribed in the rule for collateral deeds under Head 'Conveyance'.

42. Mortgages assignments, acknowledgments, or promissory notes granted to the treasurer, or other officer of the Bank of Bengal on account of the bank or to any private banker or agent for loans or advances made on the deposit of Government securities, bullion, plate, jewels, or other goods.

To be charged as Promissory Notes.

41. Partitions by private agreement of heirs and co-sharers, or made by public officers of estates, of property real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, when a sharer's portion exceeds in value rupees 800, then on every such sharer's copy of the deed of partition.

Sa. Rs. A.
8 0

SCHEDULE A.—(Continued).

When the sharer's portion shall not exceed 800 rupees, <i>Sa. Rs. A.</i>			
Then if not exceeding	100 Rs.	...	0 8
Exceeding 100 Rs. and not exceeding	200 "	...	1 0
" 200 " ditto	400 "	...	2 0
" 400 " ditto	600 "	...	4 0
" 600 " ditto	800 "	...	6 0

And if any sum or sums of money shall be paid or agreed to be paid for equality of partition,

The principal deed stipulating for such payment shall be charged besides with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum.

42. Policy of assurance, or insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

	<i>Sa. Rs.</i>	<i>Sa. Rs. A.</i>
Where the sum insured shall not exceed	5,000	4 0
Exceeding 5,000 Rs. not exceeding	10,000	8 0
" 10,000 " ditto	20,000	12 0
" 20,000 " ditto	50,000	16 0
above	50,000	20 0

43. Policy of insurance of any ship, vessel, sloop, lighter, boat, or the like, or of any goods or property on board, or upon the freight of any ship, vessel, sloop, lighter, boat, or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed 2 per cent. on the sum insured, if the whole sum insured, shall not exceed 1,000 rupees,

Sa. Rs. A.

0 8

If the sum insured exceed 1,000 rupees, then for every 1,000 rupees, and also for any fractional part of 1,000 rupees, whereof the same shall consist,

0 8

Where the premium shall exceed 2 per cent. on the sum insured, if the whole sum shall not exceed 1,000 rupees

1 0

If the sum insured exceeds 1,000 rupees, then for every 1,000 rupees and also for any fractional part of 1,000 rupees whereof the same shall consist,

1 0

Promissory notes, ...

See Bills of Exchange.

Promissory notes, payable at a period exceeding one year after date,

See Bonds.

SCHEDULE A.—(Continued).

44. Promissory notes, for the payment of any sum by instalments, *i.e.* *kislbundees*, or for the payment of several sums at different dates, so that the whole of the money to be paid shall be definite and certain. } The same duty as would be chargeable on a bond for the whole amount.

All receipts for money deposited in any bank, or in the hands of any banker or agent, if the same shall stipulate for the payment of interest upon the money so deposited, or in hand, shall be deemed and taken to be promissory notes.

45. Receipts or discharges given for any, or upon the payment of any sum of money. Sa. Rs. A.

exceeding	50 Rs. not exceeding	100 Rs.		
"	100 " ditto	200 "	0	2
"	200 " ditto	500 "	0	4
"	500 " ditto	1,000 "	0	12
"	1,000 " ditto	2,000 "	1	0
"	2,000 " ditto	3,000 "	1	8
"	3,000 " ditto	5,000 "	2	0
"	5,000 " ditto	8,000 "	2	8
	Above	8,000 "	4	0

Also for a receipt in full of all demands ... 4 0

And any instrument, note, memorandum, or writing, given upon the payment of money, whereby any money, debt, or demand, or the part thereof therein specified, shall be expressed or acknowledged to have been paid, settled, or otherwise satisfied, shall be deemed to be a receipt for the amount so declared to be paid or satisfied. The duty is to be paid by the party giving the receipt, and if a stamped receipt be refused, the party making the payment may provide the stamp, deducting the value thereof from the sum due.

And if any such instrument or other writing shall contain a general acknowledgment of a settlement of debts, accounts, or other demands, without specifying the amount thereof, such instrument or writing shall be deemed and taken to be a receipt in full of all demands, and charged accordingly.

And if payment be made by delivery of a bill or bills of exchange, draft or drafts, promissory note, or the like securities of money, the receipt or acknowledgment given thereupon, shall be deemed to be a receipt within the meaning of this schedule.

EXEMPTIONS.

Receipts for money paid or received by any officer of Government on account of Government, not in the commercial department.

Receipts or discharges for the rent of land granted by any zemindar, talookdar, farmer, or other malgoozar, or by any holder or proprietor of land held exempt from the payment of revenue, or by any mofussil talookdar, ijaradar, kutkenadar, or other lease-holder, or by the

SCHEDULE A.—(Continued).

gomashta, factor, or other agent of such zemindar, or other person aforesaid, to a ryot or other actual cultivator for the rent of land tilled by him.

Note.—Receipts or discharges granted by any zemindar, talookdar, or other holder or proprietor of land, or by any farmer, kutkenadar, ijaradar, or other tenant to any other talookdar, kutkenadar, ijaradar, or other lease-holder intermediate between the ryots or actual cultivators, and the sudder malgoozar or lakherajdar, shall be written on stamped paper of the kind and rates above prescribed.

Receipts and discharges given for the purchase-money of any Government securities or shares of the Bank of Bengal.

Receipts and discharges given for money deposited in the Bank, or with any agent, to be accounted for on demand, provided no interest be stipulated as payable thereon.

(If interest be stipulated, such receipt shall be chargeable as a promissory note, as above provided.)

EXEMPTION CONTINUED.

Receipts or discharges written upon promissory notes, bills of exchange, drafts or orders for the payment of money duly stamped.

Receipts and discharges given to gomashtras and others, being servants of the party giving the receipts, in acknowledgment of the performance of service, or of the said servants having rendered account of trusts and monies committed to them.

Letters by the post acknowledging the arrival of any promissory notes, bills of exchange, or other securities for money.

Receipts or discharges written upon or contained in any mortgage-deed or other security, or any deed of conveyance, settlement, or other instrument duly stamped, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money-interest, or annuity thereby secured.

46. Settlements, marriage settlements, &c.

viz.

Any deed or instrument, whereby any sum or sums of money or any Government securities, or other property real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons in any manner whatsoever,

Shall be charged with the *ad valorem* duty chargeable for a bond for the amount of value settled, or agreed to be settled, or in cases in which the value shall be indeterminate at the rate chosen by the parties under the rule and condition prescribed for bonds and agreements.

Deeds of gift and dower, whether to take effect on the instant or at a future period, determinate or indeterminate,

Shall be charged as deeds of settlement.

EXEMPTIONS.

Wills, testaments, and the like, together with deeds merely declaratory of trust, pursuant to any previous settlement, deed, or will.

GENERAL EXEMPTION AND RULE.

Deeds, instruments, and writings of any kind, in which Government, or any Board, Commission, Court, or public officer of Government may, in a public capacity, be a party, shall not be chargeable with any stamp duty, save and except deeds, instruments, and writings relating to matters of, or belonging to the commercial department, or on account of any commercial concern of, or belonging to the Honourable Company, which shall be written on stamped paper of the same value as is or may be prescribed for the like deeds or instruments in the case of private individuals.

Note.—The foregoing exemption shall not extend to deeds, instruments, and writings executed to or by the Court of Wards, Local Agents or Officers acting under their authority, such transactions being liable to a stamp duty like the transactions of individuals.

GENERAL RULE.

If any deed, instrument, or document specified in this schedule shall not be contained in one sheet or piece of paper or other material, in shall suffice that one sheet shall bear the stamp, provided that the signature or seals of the parties and witnesses be thereupon.

BENGAL REGULATION XVI OF 1824.

(Passed on the 18th November 1824, and operating six weeks after promulgation i.e. from 30th December 1824 to 16th June, 1829).

Under this regulation a new paper for impressed stamps was introduced bearing the Arms of the East India Company in water-marks. Authentication by superintendent was no longer necessary for stamps above the value of eight annas. The penalty payable for insufficiency of stamp duty was raised to twenty times of the duty payable. The rules as to counter-stamping at the Treasury were maintained, and the counter stamp was to bear the words "General Treasury."

Schedule referred to in the body of the Regulation, containing the duties chargeable on Instruments of conveyance, Contract, Obligation and Security for Money and on Deeds in general.

Agreement or Minute or Memorandum of an Agreement concerning any making or thing of the value of 500 rupees, or upwards, not otherwise charged in this schedule, nor expressly exempted from all stamp duty, whether the same be only evidence of a contract or obligatory upon the party,

STAMP-DUTY.

Sicca. Rupees. Annas.

8 0

Exemptions.

Memorandum of agreement, for the hire of labour.

Memorandum for the sale of goods, under the value of Rs. 500, and all agreements carried on by letter and the like between merchants and other persons, residing 40 miles from each other.

Assignments if not of the nature specified under the heads of Conveyances and Settlements nor specially exempted Eight rupees.

Bill of Exchange. Drafts, Promissory Notes, Hoondies, Teeps, Burats, or other order or obligation for the payment of money payable (if payable within the Provinces subordinate to the Presidency) at sight, or at any stated period, not exceeding three months after date or 90 days after sight, (not being a deed, instrument, or writing bearing the attestation of one or more witnesses) together with all Bills of Exchange payable out of the said Provinces at whatever date.

STAMP-DUTY.

If for a sum of money not exceeding			Sicca. Rupees. Annas.		
Rs. 25			0 1		
Above	Rs.	Rs.			
	25, but not exceeding	50	0	2	•
"	50 ditto	100	0	4	
"	100 ditto	200	0	8	
"	200 ditto	400	0	12	
"	400 ditto	800	1	0	
"	800 ditto	1,600	1	8	
"	1,600 ditto	3,000	2	0	
"	3,000 ditto	5,000	2	8	
"	5,000 ditto	10,000	4	0	
"	10,000 ditto	20,000	6	0	
"	20,000 ditto	30,000	8	0	
"	30,000 ditto	50,000	12	0	
"	50,000 ditto	1,00,000	16	0	
Above rupees 1,00,000	...	...	20	0	

Promissory Notes, written on paper of the above value shall not be reissued after payment. Promissory Notes intended to be reissued shall be charged as follows :—

STAMP-DUTY.

If for a sum, not exceeding			Sicca Rupees. Annas.		
Rs. 25			0 2		
Above	Rs.	Rs.			
	25 but not exceeding	50	0	4	
"	50 ditto	100	0	8	
"	100 ditto	200	0	12	
"	200 ditto	400	1	0	
"	400 ditto	800	1	8	
"	800 ditto	1,600	2	0	
"	1,600 ditto	3,000	2	8	
"	3,000 ditto	5,000	4	0	
"	5,000 ditto	10,000	6	0	
"	10,000 ditto	20,000	8	0	
"	20,000 ditto	30,000	12	0	
"	30,000 ditto	50,000	16	0	
"	50,000 ditto	1,00,000	20	0	
"	1,00,000	...	32	0	

Note.—The Governor-General in Council reserved to himself the power of admitting any Bank or Company to compound for the stamp duty chargeable on the Notes issued by it. Notice of such arrangements to be given in the Government Gazette.

FOREIGN BILLS OF EXCHANGE, drawn in sets for every Bills of each set, where the sum made payable thereby may not exceed				STAMP-DUTY.		
	Rs.			Sicca	Rupces.	Annas.
More than rupee	400	ditto	400		0	8
"	800	ditto	800		0	12
"	1,600	ditto	1,600		1	0
"	3,000	ditto	3,000		1	8
"	5,000	ditto	5,000		2	0
"	10,000	ditto	10,000		2	8
"	20,000	ditto	20,000		4	0
"	30,000	ditto	30,000		6	0
Exceeding	50,000	ditto	50,000		8	0
					12	0

Exemptions.

Bills of Exchange drawn, and Promissory Notes issued by Government Officers, having authority to draw Bills upon the Government Treasuries, or to issue Promissory Notes, or other acknowledgments on account of Government.

All drafts or orders for the payment of any sum of money, to the bearer on demand, drawn upon any bank, Banker or Agent, residing within 20 miles of the place, where such draft or order shall be issued, such place being specified on the face of the draft.

BILLS OF LADING of, or for any goods to be exported				STAMP-DUTY.		
				Sicca.	Rupces.	Annas.
					1	0

BILLS OF SALE. An Absolute bill of Sale.—See Conveyances.

BILL OF SALE as a Security being the principal or only Deed whereby the property is conveyed. See Mortgage.

BILL OF SALE as a Security being merely a collateral one, with some deed or instrument that has paid the *ad-valorem* duty prescribed for conveyances,

8 0

Bonds, Tamasooks, or other Deed, or Instrument, or other written Obligation for the payment of money, bearing the attestation of one or more witnesses, Promissory Notes or other Obligation as aforesaid, payable at a period exceeding three months after date, or 90 days after sight.

For any sum exceeding 25 rupees ...		
Above	Rs.	Rs.
	25 and not exceeding	50
"	50	ditto 100
"	100	ditto 200
"	200	ditto 300
"	300	ditto 500
"	500	ditto 1,000
"	1,000	ditto 2,000
"	2,000	ditto 3,000
"	3,000	ditto 5,000
"	5,000	ditto 10,000
"	10,000	ditto 20,000
"	20,000	ditto 30,000
"	30,000	ditto 50,000
"	50,000	ditto 75,000
"	75,000	ditto 1,00,000
"	1,00,000	ditto 1,50,000
"	1,50,000	ditto 2,00,000
"	2,00,000	...

Bonds, Concerning Respondentia and Bottomry

Bonds given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued,

Bonds for annuities, for an indefinite period, such as life annuities and the like,

Bonds where the amount of the money to be secured, or ultimately recovered shall be uncertain or unlimited

Where the amounts limited to a certain sum

Bonds taken as collateral security, with some Deed or Instrument that has paid the *ad valorem* duty prescribed for conveyances or money Bonds or as security for the performance of any other Contract, Covenant, or agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand

Bonds of Indemnity

Bonds for the due execution of an office or work, and all other Bonds not otherwise charged or exempted from duty

STAMP-DUTY.		
Sicca	Rupees.	Annas.
	0	2
	0	4
	0	8
	1	0
	2	0
	4	0
	6	0
	10	0
	16	0
	20	0
	32	0
	40	0
	50	0
	64	0
	70	0
	80	0
	100	0
	120	0
	150	0

STAMP-DUTY.

Ad valorem as above.

Shall be charged at the rate of the amount engaged to be paid or accounted for, or at the value of the thing to be delivered, or transferred.

Shall be charged at the rate of 10 times the yearly payment.

Sa.	Rupees.	Annas.
	150	0

The same as on a Bond for such limited sum.

STAMP-DUTY.

Sa.	Rupees.	Annas.
	8	0
	8	0
	8	0

Exemptions.• **ARBITRATION BONDS—**

Bond given to, or by the officers of Government on account of any matter, or thing of, or belonging to the Government in its Political or Territorial capacity,

Security bonds, which may be taken by, or by order of any Court, Collector or other Judicial or Revenue authority, Razeenamahs, Sooluhnamas, and Ruffanahs, filed in any suit pending in a Court of Justice, shall be charged as prescribed in the Regulations already in force or hereafter to be enacted. • ∴

Sa.	Rupees.	Annas.
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	8	0
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CHARTER-PARTIES, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter or, other writing between the Captain, Master or Owner of any Ship or Vessel and any other person for, or relating to the freight or conveyance of any money, goods, or effects, on board of such ship or vessel

	8	0
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Exemptions.

Charter-parties of Ships or Vessels taken up by Government for the conveyance of troops or military stores, or for other political purposes

Contracts or Deeds if not otherwise charged nor exempted from duty ...

	8	0
--	---	---

Co-partnership, Deed of, ...

	8	0
--	---	---

Composition—Deeds or other instruments of Composition between a debtor or debtors, and his, her, or their creditors

	8	0
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Conveyances, whether grant, deposition, assignment, transfer, renunciation, or of any other kind or description whatsoever upon the sale of any lands, tenements, rents, annuities or other property, real or personal, heritable, or movable, or of any right, title, interest or claims in, to, out of, or upon any lands, houses, rents, annuities, or other property, that is to say, for or in respect of the principal or only Deed, Instrument, or writing, whereby the property sold shall be conveyed to or otherwise vested in the purchaser, or purchasers, or to some other person, by his or their direction

Where the purchase or consideration money therein expressed or denoted shall not exceed rupees 50

Above	50 but not exceeding	100
"	100 ditto	200
"	200 ditto	500
"	500 ditto	1,000
"	1,000 ditto	2,000
"	2,000 ditto	3,000
"	3,000 ditto	5,000
"	5,000 ditto	8,000
"	8,000 ditto	12,000
"	12,000 ditto	20,000
"	20,000 ditto	30,000
"	30,000 ditto	50,000
"	50,000 ditto	1,00,000
"	1,00,000 ditto	2,00,000

And for every further lack of rupees beyond two lacks

Sa.	Rupees.	Annas.
	0	8
	1	0
	2	0
	4	0
	8	0
	12	0
	16	0
	20	0
	32	0
	40	0
	50	0
	64	0
	80	0
	100	0
	150	0
	100	0

Note :—Where, of several Deeds, Instruments or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to engross the same on paper, parchment, vellum or the like stamped for the prescribed *ad valorem* duty provided, however, that in all cases where there are more Deeds than one, all other Deeds than the principal shall be charged with a stamp duty of 8 rupees, and all such Deeds shall specify by their contents which other is the principal deed by which the conveyance has been effected certifying that it is executed in the manner and on material stamped as required.

Exemptions.

All grants, Leases, Sales, or the like wherein Government in its political or territorial capacity is a party.

Note.—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent or in satisfaction of decrees of Court, in which cases the purchaser shall be required to pay the prescribed duty along with the purchase-money, and shall receive, from the officer conducting the sale a deed of sale executed on paper impressed with a corresponding stamp.

All transfers of subscriptions to any of the Government Loans or other Government Securities, also of Bank Shares.

• **COPIES.** Copy in any manner authenticated or declared to be a true copy or made for the purpose of being given in evidence as a true copy of any Bond, Deed or Instrument of Agreement, Contract, conveyance, or of any Deed or Instrument whatsoever chargeable with a stamp duty.

Where such copy shall be made for the security or use of any person being a party to, or taking any benefit, or interest immediately under such Agreement, Contract, Bond, Deed or other Instrument

Where such copy shall be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under such Agreement, Contract, Bond, Deed, or other Instrument

Likewise any copy, authenticated, or made as aforesaid, of any schedule, receipt, or other matter put or endorsed on, or annexed to any such Agreement, Contract, Bond, Deed or other Instrument aforesaid

Exemptions.

Copies made for the private use only of any person having the custody of the original instrument, or of his, or her Attorney or Solicitor.

Copies of papers, which public officers are directed by any general Regulation to make, require, or furnish, not specially declared chargeable with duty.

Note.—Copies of records, accounts, or other documents required by individuals from the public offices, not specially charged with or exempted from duty, together with copies of Decrees and Proceedings of the Courts of Judicature shall be charged in the manner and subject to the conditions prescribed in section XIX, Regulation I of 1814, and other provisions of the existing Regulations

Deeds of any kind, not otherwise particularized in this Schedule

The same duty, as for the original instrument.

STAMP-DUTY.

Sa.	Rupees.	Annas.
	8	0

8	0
---	---

STAMP-DUTY.

Sa.	Rupees.	Annas.
	8	0

Exchanges. Any deed whereby any real property shall be conveyed or surrendered in exchange for other property.

If no sum of money shall be paid, or agreed to be paid for equality of exchange.

If any sum of money be paid, or agreed to be paid, for equality of exchange.

Engagements to cultivate, provide or deliver indigo plant, or to produce, manufacture, provide, or deliver, any other article of Commerce in consideration of advances made.

LEASES. Any lease made in perpetuity, or for a term of years or period, determinable with one or more lives, or otherwise contingent in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent,

Any leases of lands houses, or other real property, at a yearly rent, without any payment of any sum of money, by way of fine or premium,

Where the yearly rent shall exceed Rs. 12, but shall not exceed Rs. 24

	Rs.	Rs.
Exceeding 24 but not exceeding	25	25
" 50	ditto	100
" 100	ditto	250
" 250	ditto	500
" 500	ditto	1,000
" 1,000	ditto	2,000
" 2,000	ditto	4,000
" 4,000	ditto	6,000
" 6,000	ditto	10,000
" 10,000	ditto	50,000
" 50,000	...	...

Any lease of lands, houses or other real property, stipulating for a yearly rent, and granted in consideration of a fine or premium.

THE COUNTERPART OF ANY LEASE charged with a duty, exceeding eight rupees, shall likewise be executed on paper, vellum or parchment bearing a stamp of

Exemptions.

All leases or Pattahs, when the annual rent shall not exceed twelve rupees.

Sa. Rupees Annas.

8 0

The same ad valorem duty as for a Conveyance for such sum.

Shall be charged on the amount advanced at the rate of Bonds or other obligations for the payment of money payable at a period exceeding three months after date.

The same duty as for a Conveyance, or Sale for a sum of the amount of such consideration.

Sa. Rupees Annas

0 8

0	12
1	0
2	0
4	0
8	0
12	0
16	0
20	0
32	0
64	0
80	0

Shall be charged with both *ad valorem* duties above provided.

Four rupees.

All leases or Pattahs given by authority of Government, or of the Board of Revenue, or other authority, exercising the powers of that Board, and of the Court of Wards; Pattahs, Cuboolyuts and other instruments of Contract relating to the rent of land executed between any Zemindar, Talukdar, Farmer or other Sudder Malgoozar, or any holder or proprietor of land, exempt from the payment of revenue, or any Mofussil Talookdar, Ijaradar, Kutkenadar, or other leaseholder, or the Gomasta, Factor, or other Agent of such Zemindar or other person aforesaid on the one part, and a ryot or other actual cultivator on the other, for the land tilled by him.

Note :—All Leases, Pattahs, Cuboolyuts, or other similar instruments of contract between Zemindars, Talookdars, or other holders or proprietors of land, whether subject to the payment of Revenue to Government or otherwise Farmers, Kutkenadars, Ijaradars, or other tenants, and any other Talookdar, Kutkenadar, Ijaradar or other leaseholder, intermediate between the Ryots or actual cultivators and the Sudder Malgoozar or Lakherajdar shall be written on stamped paper of the value above prescribed.

Letters or powers-of-Attorney or Commission or Factory in the nature thereof.

Power to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case or transaction, or sundry acts to be done, after a manner specified in the instruments,

General,

Exemptions.

Wakalatnamahs executed to regular pleaders of the Sudder Dewanny Adawlat or any of the Subordinate courts of judicature, authorizing them to prosecute or defend suits therein pending or to present or make any miscellaneous petition, application or motion to the Court, which shall be charged according to Regulation I of 1814.

STAMP-DUTY

Sa.	Rupees.	Annas.
	1	0
	4	0

Mookhtarnamas executed by native officer and solders belonging to regular corps, on the Military establishment of the presidency of Fort William.

Letters of License from creditors to debtors.

Mortgage. Any deed of Mortgage or Conditional sale, with or without possession given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon also any deed or contract accompanied with a deposit of title-deeds to any property where the same may be made as a security for payment of money due or lent at the time.

Deeds of Mortgage, or the like given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued.

Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like.

When the total amount secured by such mortgage is unlimited. ...

Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum.

Note.—Where a bond may have been already taken for the amount secured or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the Deed of Mortgage. ...

Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty and all other deeds connected with the same transaction.

Acknowledgments or Promissory notes granted to the Treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private Banker

Sa.	Rupees.	Annas.
	8	0

Shall be charged after the same manner and at the same rates as if, in lieu of such deed of mortgage or the like, a bond had been taken for the sum due or lent at the time.

Shall be charged at the rate of the total amount assured or of the *bonafide* value.

Shall be charged at the rate of ten times the annual payment.

Sa.	Rupees.	Annas.
	150	0

At the rate of such limitation.

STAMP-DUTY.

Sa.	Rupees.	Annas.
	8	0

8	0
---	---

or Agent for loans or advances made on the deposit of Government Securities, Bullion, Plate, Jewels or other goods, and payable within three months after date, shall be charged as Promissory Notes. If payable at a date, exceeding three months, shall be charged as deeds of Mortgage.

Exemptions.

Mortgages, to which Government in its political or territorial capacity, or the officers of Government acting for the Government in matters relating to its political or territorial concerns are parties.

Partition.—Any Deed of partition of real or personal property adjusted by mutual agreement amongst Co-heirs, Co-parceners, or the like.

And if any sum or sums of money shall be paid or agreed to be paid, for equality of partition

Sa.	Rupees.	Annas.
	8	0

The principal Deed stipulating for such payment shall be charged with *ad valorem* duty prescribed for a Conveyance or Sale for an equal sum.

On partition of estates made by Collectors of land revenue, whether on application of the parties, or any of them, or in execution of a decree of Court, if the value of the portion allotted to each sharer shall exceed Rs. 800, a stamp duty of the above amount shall be charged on each copy of the paper of partition, or other title-deed, which may be taken out by any of the parties after the partition shall have been approved by the Revenue Board.

Where the portion of each sharer shall not exceed Rs. 800, the following rate of duty shall be chargeable.

If the value of the portion shall not exceed		Rs. 100	
	Rs.		Rs.
More than	100, but not exceeding		200
"	200	ditto	400
"	400	ditto	600
"	600	ditto	800

Sa.	Rupees.	Annas.
	0	8
	1	0
	2	0
	4	0
	6	0

Policy of Assurance or Insurance or other Instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

Where the sum insured shall not exceed Sa. Rs. 5,000.	Sa. Rs.	Sa. Rs.
Exceeding 5,000 but not exceeding 10,000	10,000	ditte 20,000
" 10,000 ditte 20,000	20,000	ditto 50,000
" 20,000 ditto 50,000	50,000	
Above 50,000		

Sa.	Rupees.	Annas.
	4	0
	8	0
	12	0
	16	0
	20	0

Sa. Rs. A.

Policy of Insurance of any Ship, Vessel, Sloop, Lighter, Boat, or the like, any goods or property on board, or upon the freight of any ship, vessel, sloop lighter, boat or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed 2 per cent. on the sum insured, if the whole sum insured shall not exceed, 1,000 Rs. ... 0 8

If the sum insured exceed 1,000 Rs., then for every 1,000 Rs. and also for any fractional part of 1,000 Rs., whereof the same shall consist, ... 0 8

Where the premium shall exceed 2 per cent. on the sum insured, if the whole sum shall not exceed 1,000 Rs. ... 1 0

If the sum insured exceed 1,000 Rs., then for every 1,000 Rs., and also for any fractional part of 1,000 Rs., whereof the same shall consist, ... 1 0

PROMISSORY NOTES. Payable to the bearer on demand, at sight, or at any stated period, not exceeding 3 months after date, or 90 days after sight, ... See Bills of Exchange.

PROMISSORY NOTES. Payable at a period exceeding 3 months after date, or 90 days after sight, ... See Bonds.

PROMISSORY NOTES.—For the payment of any sum by instalments, or for the payment of several sums at different dates, so that the whole of the money to be paid shall be definite and certain, The same duty as would be chargeable on a bond for the whole amount.

All receipts for money deposited in any Bank, or in the hands of any Banker, or Agent, if the same shall stipulated for the payment of interest upon the money so deposited, or in hand, shall be deemed and taken to be Promissory Notes.

Sa. Rs. A.

RECEIPTS OR DISCHARGES given for, or upon the payment of any sum of money not exceeding thirty-two Rupees

						0	1
Exceeding 32 Rupees, not exceeding 100 Rupees						0	2
Ditto	100	ditto	ditto	200	ditto	0	4
Ditto	200	ditto	ditto	500	ditto	0	8
Ditto	500	ditto	ditto	1,000	ditto	0	12
Ditto	1,000	ditto	ditto	2,000	ditto	1	0
Ditto	2,000	ditto	ditto	3,000	ditto	1	8
Ditto	3,000	ditto	ditto	5,000	ditto	2	0
Ditto	5,000	ditto	ditto	8,000	ditto	2	8
Above	8,000	ditto	...	...	...	4	0
Also a receipt in full of all demands	...	...	...	...	...	4	0

And any instrument, note, memorandum, or writing given upon the payment of money, whereby any money, debt or demand, or the part thereof therein specified shall be expressed or acknowledged to have been paid, settled or otherwise satisfied, shall be deemed to be a receipt for the amount so declared to be paid or satisfied.

And if any such instrument or other writing shall contain a general acknowledgment of the settlement of debts, accounts or other demands, without specifying the amount thereof, such instrument or writing shall be deemed and taken to be a receipt in full of all demands and charged accordingly.

And if payment be made by delivery of a Bill or Bills of exchange, Draft, or Drafts, Promissory Notes, or the like securities of money, the receipt or acknowledgment given thereupon shall be deemed to be receipt within the meaning of this Schedule.

EXEMPTIONS.

Receipts for money paid as received by any Officer of Government on account of Government.

Receipts or discharges for the rent of land granted by any Zemindar, Talookdar, Farmer or other Malgoozar, or by any holder or proprietor of land, held exempt from the payment of Revenue, or by any Mofussil Talookdar, Ijaradar, Kutkenadar, or other leaseholder, or by the Gomasta, Factor, or other Agent of such Zemindar, or other person aforesaid, to a Ryot or other actual cultivator for the rent of land tilled by him.

NOTE. Receipts or discharges granted by any Zemindar, Talookdar, or other holder or proprietor of land, or by any Farmer, Kutkenadar, Ijaradar or other tenant to any other Talookdar, Kutkenadar, Ijaradar or other leaseholder intermediate between the Ryots or actual cultivators, and the Suddur Malgoozar or Lakherajdar, shall be written on stamped paper of the value above prescribed.

Receipts or discharges given for the purchase money of any Government Securities or shares of the Bank of Bengal.

Receipts and discharges given for money deposited in any bank, or with any agent to be accounted for on demand, provided no interest be stipulated as payable thereon.

If interest be stipulated, such receipt shall be chargeable as a Promissory Note.

Receipts or discharges written upon Promissory Notes, Bills of Exchange, Drafts or Orders for the payment of money duly stamped.

Letters by the post acknowledging the arrival of any Promissory Notes, Bills of Exchange, or other securities for money.

Receipts or discharges written upon or contained in any Bond, Mortgage, or other Security, or any conveyance, deed, or other instrument duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured.

Settlements.— Any deed or Instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons in any manner whatsoever.

Deeds of Gifts and Dower, whether to take effect on the instant or at a future period determinate or indeterminate,

Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled or, in cases in which the value shall be indeterminate at the rate of Rs. 100

Shall be charged as Deeds of Settlement.

Exemption.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust pursuant to any previous Settlement, Deed, or Will.

General Exemptions.

Deeds, Instruments, and writings of any kind in which Government or any Board, Commission, Court or public officer, may, in a public capacity, be a party, save and except Deeds, Instruments and writings relating to matters of or belonging to the Commercial Department, shall not be chargeable with any stamp duty.

BENGAL REGULATION •1 OF 1814.

(In force from 1st May 1814 to 30th December, 1824)

A Regulation for amending the Regulations before enacted for raising a Revenue by means of stamps.

Section 4.—No stamp shall be valid, or be issued from the stamp office, until the paper, parchment, leaf of *taur tree* (*taurpottah*), or other material on which the stamp has been impressed, shall have received the prescribed counter-stamp at the general Treasury.

Second clause omitted.

Section 5. (ii) Proviso, if any person shall be desirous of having any instrument executed on vellum, parchment, or any other material, instead of paper or *taur pottah*, he shall be entitled to have the same stamped, supposing it to correspond nearly with the regulated size of stamped paper, on paying the established duty. Bonds, deeds of conveyance, and other instruments, executed on any material of the above description, will accordingly be receivable, if duly stamped in evidence with Courts of Judicature in the same manner as if such instruments had been executed on common paper according to the ordinary practice of the Stamp Office.

9. From and after the period fixed for the operation of this regulation, any bond, promissory note, bill of exchange, bill of credit, or other obligations for the payment of money, any receipt or acquittance by which any sum of money or demand shall be acknowledged to have been paid, received, liquidated, discharged, accounted for, or in any manner satisfied, any deed of gift, sale, devise, or other transfer of property, real or personal, any lease, deed of mortgage, or other limited assignment of land, any deed of contract, partnership, agreement, security or engagement, which may not have been written on paper bearing the prescribed stamp, shall not be admitted in evidence, or otherwise received or filed in any Court of Judicature. (*The rest of the Section Omitted.*)

Section 11.—From and after the date specified in the preamble to this regulation, every bond, Promissory Note, Bill of Exchange, Letter of credit, or other obligation for the payment of money. Every receipt or Acquittance, whereby any sum of money or demand shall be acknowledged to have been paid, received, liquidated, discharged, accounted for, or in any manner satisfied; every Deed of Gift, Sale, Devise or other transfer of property, real or personal; every lease, deed of mortgage, or other limited assignment of land; every deed of contract, partnership, agreement, security or engagement, which may be executed within the Provinces subject to the Presidency of Fort William in Bengal, shall be written on paper (or some other material) impressed with the Government stamp, the value of which stamp shall be regulated as follows:—

TABLE

If the bond or other instrument shall be for a sum not exceeding sixteen rupees, or if the value of the property transferred or otherwise affected by it shall not exceed sixteen rupees, the deed shall be executed on stamped paper of the value of one anna. Sa. Rs. A.

If above 16 rupees and not exceeding 64 rupees					...	...	0	2
"	64	ditto	ditto	125	"	...	0	4
"	125	ditto	ditto	250	"	...	0	8
"	250	ditto	ditto	500	"	...	1	0
"	500	ditto	ditto	1,000	"	...	2	0
"	1,000	ditto	ditto	2,000	"	...	4	0
"	2,000	ditto	ditto	5,000	"	...	8	0
"	5,000	ditto	ditto	10,000	"	...	16	0
"	10,000	ditto	ditto	20,000	"	...	32	0
"	20,000	ditto	ditto	50,000	"	...	50	0
"	50,000	ditto	ditto	1,00,000	"	...	100	0
"	1,00,000	ditto	...	...	...	...	150	0

12. To prevent misconstruction, it is hereby declared, that every lease and its counterpart (pottah and caboolyet) or other engagement contracted between landlord and tenant, every receipt (dakelah) or other acknowledgment for the payment of rent, is required to be written on paper bearing the prescribed stamp, supposing that such lease, receipt or other instrument relate to lands held exempt from the payment of revenue to Government; but that instruments of the correspondent descriptions which have relation to lands subject to the payment of revenue to Government, need not be written on stamped paper.

BENGAL REGULATION VII OF 1800.

(In force from 1st October 1800 to 16th April 1807).

Section 3.—All original obligations for the payment of money, whether bonds, Promissory Notes, Drafts, Bills of Exchange, or of any other denomination whatever, for payment of a sum of money exceeding Rs. 16 (sicca), exclusive of interest, (excepting obligations executed or drawn on the part of Government, or for money payable to Government, or for the rent of land paying revenue to Government), shall be written on stamped paper subject to the following rates of duty.

				STAMP-DUTY.
1.	If the obligation be for a sum exceeding Rs. 16, and not above Rs. 64.			Two annas.
	Rs.		Rs.	
2.	If exceeding 64 but not above 125			Four annas.
3.	125	ditto	250	Eight annas.
4.	250	ditto	500	One rupee.
5.	500	ditto	1,000	Two rupees.
6.	1,000	ditto	2,000	Four rupees.
7.	If exceeding 2,000			Eight rupees.

The above stamps to be inscribed 'MONEY PAPERS, in the Persian and Bengali language and in the Hindoostanee language and Nagri character.

Section 4.—All acknowledgments for the receipts of money whereby any sum exceeding Rs. 16 (sicca) shall be acknowledged to have been paid, received, accounted for, balanced, discharged, released; or in any manner satisfied or which shall in any manner signify such acknowledgement (with an exception to all acknowledgments granted on the part of Government, or for sums received from Government, for the rent of land paying revenue to Government) shall be written on stamped paper subject to the rates of duty specified in the preceding section upon obligation for the payment of money.

Section 5.—All original deeds for the Sale, Gift, Devise or other Transfer of Property real or personal; All deeds of Mortgage, Assignment, Release; All other deeds of Contract and Agreement; as well as all other Legal Instrument, of whatever denomination (with the exceptions hereafter noticed); Also all copies of such deeds and instruments prepared as legal vouchers whether by a Kazi, Mufti, or any other person to be written on stamped paper.

		STAMP-DUTY.
According to the size of the paper which may be used for such original deeds or instruments or copies of them. Four sizes inscribed 'Law Papers' in the Persian and Bengali languages and in Hindusthancee language in Nagri character.		
1.	Two rupees.	
2.	One rupee.	
3.	Eight annas.	
4.	Four annas.	

CL. 4. **Exception.** All contracts or engagements of whatever description for the provision of any part of the company's investment or for the manufacture of salt or opium; As well as all deeds to which Government may be one of the contracting parties; and the originals and copies of such are exempted, unless otherwise provided for by any special Regulation.

Section 6.—Provides for the payment of penalty equal to five times the duty if presented to the Collector within sixty days and a penalty equal to ten times the duty if presented outside sixty days. The penalty may be remitted by the Board of Revenue.

BENGAL REGULATION XXXI OF 1814.

(In force from 1st February, 1815 to 30th December, 1824.)

This is merely an amending Regulation to Reg. 1 of 1814 and by it the following duties were added :—

All Authenticated copies prepared as legal vouchers by a Kazi, Mufti or other authorized person ...

STAMP DUTY.
The same as those for the originals.

Security Bonds not for a specific amount, deeds of Contract, Partnership, Agreement, and Engagement of or whatever nature not relating to a specific sum or value ...

One Rupee.

The provisions of S. 11 Reg. 1 of 1814, were and are intended to be applicable to Kabeenamahs or deeds of marriage settlement in common with other deeds of contract for specific amount.

BENGAL REGULATION VI OF 1797.

(In force from 10th April 1797 to 30th September, 1800)

In force in Bengal, Bihar & Orissa and Benares.

Section 16.—All original Deeds of Contracts, Bargains, Sales, Mortgages, Releases, Assignments and other conveyances in writing; or instruments, (excepting original deeds relating to marriage-settlements which are not required to be written on stamped-paper and the original obligations, for the payment of money, herein after specified in S. 21; and all copies of the deeds and instruments abovementioned, and of deeds relating to marriage-settlements, and of the aforesaid obligations, prepared by a Kazi or his officers or any Mufti and to be attested with his or their seals or signatures.

To be written on stamped paper of certain sizes and descriptions and inscribed "Law papers". Four kinds to be employed respectively according to the size or amounts of papers required to be used for the purpose.

STAMP DUTY.

One rupee (Sicca).
Eight annas.
Four annas.
Two annas.

Under this Regulation, S. 16. cl. 6. a document not properly stamped, could not be received in evidence, except on payment of ten times the proper value of the stamp.

Section 21.—All original Bonds (tamassooks), Promissory Notes (teepts), or other written obligations (except Bills of Exchange) hoondees for payment of a sum exceeding Rs. 50 in value of whatever currency, exclusive of any interest which may be stipulated to be paid thereon, shall be written on stamped paper, for which the following rates to be specified in the stamps shall be paid.

STAMP DUTY.

If obligation be for payment of a sum exceeding Rs. 50, but not above Rs. 100
If above Rs. 100, but not above Rs. 1,000

Four annas.
Eight annas.

For any sum above Rs. 1,000.

One rupee.

The stamp papers to be used in writing such obligations shall have inscription in Persian and Bengali languages and characters and in Hindusthanee language and character.

Twenty five rupees.

BOMBAY REGULATION XIV OF 1815.

(In force from 1st March 1816 to 1st November, 1827).

(But did not commence to operate in the Zillahs of Surat and
Broach till 21st October, 1816.)

Section 23.—From and after the date specified in the preamble to this Regulation, every Bond, Promissory Note, or other obligation, for the payment of a specified sum of money—every deed of Gift, Sale, Devise, or other Transfer of property, real or personal—every Lease (except as provided in the following section)—every Mortgage or other limited Assignment of immovable property, which may be executed within the provinces subject to the Presidency of Bombay shall be written on paper (or some other material) impressed with the Government stamp, the value of which stamp shall be regulated as follows :—

				STAMP-DUTY.
If the bond or other instrument shall be for a sum not exceeding sixteen rupees, or if the value of the property transferred, or otherwise affected by it, shall not exceed sixteen rupees, the deed shall be executed on stamped paper of the value of				One anna.
	Rs.		Rs.	
2.	If above 16 and not exceeding 64			Two annas.
3.	„ 64	ditto	125	Four annas.
4.	„ 125	ditto	250	Eight annas.
5.	„ 250	ditto	500	One rupee.
6.	„ 500	ditto	1,000	Two rupees.
7.	„ 1,000	ditto	2,000	Four rupees.
8.	„ 2,000	ditto	5,000	Eight rupees.
9.	„ 5,000	ditto	10,000	Sixteen rupees
10.	„ 10,000	ditto	20,000	Thirty rupees.
11.	„ 20,000	ditto	50,000	Fifty rupees.
12.	„ 50,000	ditto	1,00,000	One hundred rupees.
13.	„ 1,00,000			One hundred fifty rupees.

Section 24.—To prevent misconstruction it is hereby declared that every lease and its counterpart (pottah and kaboolayat) or other engagement contracted between landlord and tenant—every receipt (dakhila) or other acknowledgment for the payment of rent, is required to be written on paper bearing the prescribed stamp, supposing that such lease, receipt or other instrument, relates to land held exempt from the payment of revenue to Government; but that instruments of the corresponding descriptions which have relation to land subject to the payment of revenue to Government need not be written on stamped paper.

COPIES.—*Section 36.*—All authenticated copies of the documents specified in section XXIII of this Regulation, which may be prepared as legal vouchers by a Kazi, Mufti, or other authorized person, shall be written on stamped paper, according to rates prescribed for the originals of such deeds. Any copies not written on such paper, will not be admissible in evidence under section XXIII of this Regulation.

Section 37.—In explanation of section XXIII of the Regulation, it is hereby declared, that (security-bonds for appearance (hazirzamani), security bonds for the payment of eventual cost of suit) as well as all other security bonds, not being for a specified amount as to make it practicable to apply to them the table of rates stated in section XXIII of this Regulation, are required to be written on stamped paper of the value of one rupee under the penalty declared in section XIII of this Regulation.

BOMBAY REGULATION XVIII OF 1827.

(In force from 1st November 1827 to 1st October, 1860).

*A Regulation for Levying a Stamp-Duty on certain papers within the territories subordinate to the Presidency of Bombay:—*Passed by the Governor-in-Council on the 1st January, 1827.

Preamble.—Whereas it has been found expedient to levy a tax upon bonds and other written obligations and engagements; upon deeds, or other documents transferring or assigning property; upon plaints and other law proceedings: upon sunnuds and certain certificates: and upon copies of documents requiring to be authenticated by a public officer; the following rules are therefore enacted, to take effect from such date as shall be prescribed in a Regulation to be hereafter passed for that purpose.

CHAPTER I.

OF STAMPS, RULES FOR THE SUPPLY AND VEND OF THEM,
AND PUNISHMENTS ASSIGNED TO ILLEGAL SALES
AND PURCHASES.

Section II.—*Institution of Zilla stamp offices.*—An office for the sale and distribution of stamps shall be established in each Zilla under the superintendence of the Collector of land revenue.

Section III.—Clause 1st.—Vendors of stamps to be appointed and stationed wherever required.—One or more vendors of stamps shall be appointed by the Collector in each komavisdarship, or district of similar extent within a Zilla, who shall have their offices at such places as the Collector may fix; but a vendor shall always be established by the Collector in each town or village where the Court of a Commissioner is held.

Clause 2nd.—A list of vendors to be fixed up at each cutchery or court.

Section IV.—Stamps how adequately supplied.—It shall be the duty of the Superintendent of Stamps and of the Collector of each Zilla to keep the Zilla constantly furnished with an adequate supply of the requisite stamps, and it shall further be the duty of the Collector to make the same provisions in regard to each subordinate vendor.

Section V.—Checking of stamps.

Section VI.—Clause 1st.—Stamps on paper and on the leaf of the taur tree to be furnished.—The stamped material procurable from the proper public officers and vendors shall be paper of the manufacture of the country, and the leaf of the taur tree in districts where that article is used.

Clause 2nd.—*Sizes of stamped paper how made known.*—The various sizes of such stamped paper will be regulated by Government, and statements thereof will be kept exposed to public inspection at the proper public offices and the shops of the authorized vendors; and any vendor failing to conform to this rule shall be punished by the Collector under the rules contained in Regulation XVI of 1827, section IX.

Clause 3rd.—Any material whatever will, on being presented, be stamped.—Provided always that any persons shall be enabled (without prejudice to the provisions of section XIII of this Regulation) to procure the requisite stamp to be impressed upon any material of whatever size, which can without great inconvenience be stamped, by presenting the same with the price of the Stamp at the presidency to the superintendent of stamps, or elsewhere to the Collector for transmission to the Superintendent, whereupon it shall be duly stamped and returned to the owner.

Section VIII.—Clause 1st.—Particulars of the stamps.—All paper and other material issued under the authority of this Regulation shall be stamped at the general stamp office with a die bearing an inscription of the value of the stamp, in the English, Persian, Mahratta and Guzerattee languages.

Clause 2nd.—Particulars of the counter-stamps.—It shall also be counter-stamped at the General Treasury with a die bearing the following inscription in the same languages, viz., "General Treasury, 18—."

Clause 3rd.—Its authentication by signature.—It shall also be endorsed with the official signature of the Superintendent of Stamps, or of an officer acting under his authority with the sanction of the Governor in Council.

CHAPTER II.

OF STAMPS REQUIRED TO BE USED BY INDIVIDUALS IN
THEIR TRANSACTIONS WITH EACH OTHER

Section X.—Clause 1st.—Bonds and other specified documents of a value exceeding 16 rupees executed within the Zillas must be stamped.—No Bond, Promissory Note, Bill of Exchange, Letter of Credit, deed of Contract, Marriage-settlement, Partnership or Agreement, Security or Engagement, and no deed of Sale, Gift, Devise, Mortgage or other Transfer or limited Assignment of property, movable or immovable, unless the instrument be for a sum or value not exceeding sixteen (16) rupees in which case it is hereby enacted that a stamp is not required, shall, if executed within any of the Zillas subordinate to the presidency of Bombay, be valid unless duly stamped.

Clause 2nd.—Exception if the document is intended to be enforced beyond such Zillas.—But a bond or other writing, though executed within the said Zillahs is expressly intended to take effect beyond them, shall be received as a valid instrument, if it bears the stamp required for such writing in Great Britain or any of the Governments of British India, within which it was originally intended to take effect or if it is subsequently impressed with the stamp that would have been required had it been executed to take effect within any Zillah.

Clause 3rd.—Or if it be an official engagement or relate to the rent of the land.—All engagements and releases between Government or its officers and individuals are, however, to be received and admitted in evidence, or filed in any Court of judicature although not written on stamped paper; as also all leases and their counterparts or other engagements of a similar nature relating to the rent of land passed between landlords and their tenants, whether or not the said land pay revenue to Government.

Section XI.—Bonds and other specified documents executed beyond the Zillas for enforcement within them must be stamped.—No bond or other writing of any of the descriptions specified in the 1st Clause of the preceding section, though executed beyond the Zillas subordinate to the presidency of Bombay, shall be valid, unless duly stamped, if originally expressly intended to take effect within the Zillahs.

Section XII.—Clause 1st.—Stamp required for bonds and other specified writings when for a particularized value.—Every bond or other writing which is of any of the descriptions specified in Section X, Clause 1st, of this Regulation and which requires to be written upon a stamp, if it is for a specific sum of money, or if it transfers or assigns property of a value specified therein, shall, with exceptions specified in Appendix (B), be written upon a stamp of value to be regulated by the rates contained in the said Appendix (B).

Clause 2nd.—When not.—But if such bond or other writing is not for a specific sum, or does not specify the value of the property thereby transferred or assigned, it may be written either upon a

stamp of the value of eight (8) rupees, or upon a stamp of any value, provided that in the latter case no judgment shall be given thereupon beyond the utmost sum which by the rule contained in clause 1st of this Section, could be secured by the stamp used.

Section XIII.—Clause 1st.—Penalty to be paid on procuring subsequently a stamp originally required—A person possessing a bond, or other writing requiring to be written upon a stamp but which is written either on paper or other material not stamped, or on a stamp of a value below what is required, may procure such bond or writing to be duly stamped by presenting it to any Collector of land revenue with the price of the proper stamp and a penalty to Government equal to twenty times such price.

Clause 2nd.—Exception in certain cases.—But a bond or other writing of the description specified in Section X, clause 2nd, may be stamped at any time, and a bond or other writing of the description specified in Section XI of this Regulation may be stamped at any time within one year from its date, upon payment of the proper stamp only.

Clause 3rd.—Mode in which the stamp is to be furnished.—The Collector on receiving a bond or other writing for the purpose of being stamped, shall transmit it to the Superintendent of Stamps with a certificate that the price with the penalty (if any was incurred) has been paid; whereupon the Superintendent shall cause the bond or other writing to be duly stamped, and at the same time mark thereon the date on which it was stamped adding his official signature, after which he shall return it for the use of the owner.

Section XIV.—Clause 1st.—Validity of bonds, etc., subsequently stamped, how regulated.—A bond, or other writing stamped after its original date, if executed within the Zillahs subordinate to the presidency of Bombay, shall, so far as it affected by the stamp, become valid against the grantor from its original date; but as to the right of third parties, the date of its being stamped shall be held to be its real date:

S. 14. Clause 3rd.—Or, if it was executed abroad for enforcement in the Bombay Zillahs.—Or if such bond or other writing was executed beyond the Zillahs; but originally expressly intended to take effect within them, it shall, if stamped within one year become valid from its original date; if stamped after one year, it shall be subject to the same rules and penalties as a bond or other writing executed within the Zillahs subordinate to Bombay, and intended to take effect therein.

CHAPTER III.

OF STAMPS REQUIRING TO BE USED IN LAW PROCEEDINGS AND FOR THE AUTHENTICATION OF CERTAIN PUBLIC DOCUMENTS AND PAPERS.

Sections XV to XVIII.—(Relate to Court-fees).

Section XIX.—Sunnuds and similar documents.—Every sunnud granted under the authority of the Regulations, or with the sanction of Government, every certificate of heirship, executorship, administratorship, and every certificate granted by a Kazi in his official capacity,

shall bear a stamp of the value prescribed for each respectively in Appendix (E).

Section XX.—Also copies of decrees and official papers requiring authentication.—Every copy of a decree of any judicial Court, *except that of a Commissioner*, every copy of judicial or revenue proceedings of papers contained in any register, of statements, accounts, reports, and other documents of whatever description requiring to be authenticated by any public officer, and not being for public record for the use of Government or its officers acting in an official capacity shall bear a stamp of the value prescribed for each respectively in Appendix (F).

Section XXI.—In the documents specified in Chapter III, unstamped material may be added to the stamped.—Should the length of any of the documents mentioned in this Chapter be such as to prevent its being comprised in one piece of the stamped material furnished by the vendors, *unstamped material* may be added as required, provided that the several portions be firmly joined together, so as to resist future separation, and that, for the surer detection at the same if effected, the authority issuing or receiving the document shall affix his signature across each place of junction.

APPENDIX (A).

FORM OF OATH TO BE TAKEN BY THE SUPERINTENDENT OF
STAMPS. (Omitted).

APPENDIX (B).

Table showing the value of the Stamp to be used for every Bond, Promissory Note, Bill of Exchange, Letter of Credit, Deed of Contract, Marriage-settlement, Partnership or Agreement Security or Engagement (with the exception of Engagements and Releases between Government or its officers and individuals, and Leases and their Counterparts, or other similar Engagements relating to the rent of land passed between Landlord and Tenant, as specified in Section X, Clause 3rd) and for every Deed of Sale, Gift, Devise, Mortgage or other Transfer or limited Assignment of Property, moveable or immovable, of a value specified in such Deed :—

If for a sum or value not exceeding 16 rupees, no stamp is required. If for a sum or value :—

	Rs.		Rs.	Rupees.	Annas.
Above	16 and not exceeding	32	0	1	
"	32 ditto	64	0	2	
"	64 ditto	125	0	4	
"	125 ditto	250	0	8	
"	250 ditto	500	1	0	
"	500 ditto	1,000	2	0	
"	1,000 ditto	2,000	4	0	
"	2,000 ditto	5,000	8	0	
"	5,000 ditto	10,000	16	0	
"	10,000 ditto	20,000	30	0	
"	20,000 ditto	50,000	50	0	
"	50,000 ditto	1,00,000	100	0	
"	1,00,000 to whatever amount.		150	0	

APPENDICES (C) AND (D). (Relate to Court-fees. Omitted).

APPENDIX (E). (See Section XIX).

	Value of Stamp	
	Rupees.	Annas.
For every Sunnud	10	0
For every certificate of heirship, executorship, and administratorship ...	4	0
For every certificate by a Kazeer in his official capacity	2	0

APPENDIX (F). (See Section XX).

				The stamp required is of the value of	
				Rupees.	Annas.
For every copy of a decree in a suit or appeal—					
If the sum sued for or appealed against does not exceed 50 rupees.				0	8
If it be above 50 but do not exceed					
	Rs.		Rs.		
			100	1	0
"	100	ditto	500	2	0
"	500	ditto	1,000	3	0
"	1,000	ditto	5,000	4	0
"	5,000 to any sum			5	0
For copies of other papers requiring to be authenticated by any public officer the stamp required is of the value of ...				0	8

BOMBAY REGULATION VII OF 1830.

SUPPLEMENT TO REGULATION XVIII OF 1827.

A Regulation for changing the Counter-stamp to be impressed on Stamp paper and other Material.—Passed on the 17th day of March, 1830.

Preamble.—Whereas it has been determined that the counter-stamp provided in Clause 2nd, Section VIII. Regulation XVIII of 1827 shall be made at the Mint instead of the General Treasury, which requiring an alteration in the wording of the said clause, requires a corresponding modification in the Regulation; the following rule has therefore been enacted, to have effect from the date of promulgation.

All paper and other material issued under Regulation XVIII of 1827 shall be counterstamped at the Mint in place of the General Treasury, and, in substitution of the words "General Treasury, 18—" in Clause 2nd, Section VIII of the said Regulation, the inscription shall be "Mint, 18—."

BOMBAY REGULATION XIV OF 1831.

SUPPLEMENT IV TO REGULATION XVIII OF 1827.

A Regulation for rescinding that part of section VII, Regulation XVIII of 1827, which requires all Stamped Paper to be endorsed with the Official signature of some person belonging to the Office of Superintendent of Stamps and prescribing how that duty shall hence-forth be performed.—Passed on the 14th day of August, 1831.

Preamble.—Whereas it has been deemed expedient to rescind that part of section VII, Regulation XVIII of 1827, which requires that all stamped paper shall be endorsed with the official signature of the Superintendent of Stamps, or of other officers acting under his authority, and to transfer their endorsement to the department of the several Collectors of land revenue, the following rules have accordingly been enacted by the Right Honourable the Governor in Council to be in force from the 1st November, 1831, within the Bombay territories.

Section I.—Rescission of Clause 3rd, Section VII, Regulation XVIII.—Clause 3rd, Section VII, Regulation XVIII, which prescribes that all stamped papers shall be endorsed with the official signature of the Superintendent of Stamps, or of officers acting under his authority with the sanction of the Governor in Council, is hereby rescinded.

Section II.—Stamped papers to be indorsed with the Official signature of some one attached to the departments of Collectors.—It shall be the duty of the principal Collectors, Collectors and Sub-Collectors of land revenue or of their covenanted assistants, or other officers acting under their authority with the sanction of the Governor in Council, previously to issuing such stamped paper to the vendors, or to disposing of it themselves, to endorse their official signatures in writing upon each paper; and the Courts of judicature shall not admit or file any stamped paper, unless it be authenticated in the manner herein provided.

MADRAS REGULATION VIII OF 1808.

(In force from 1st January 1809 to 12th July 1817).

Section 9.—First.—All original obligations for the payment of money, whether Bonds, Promissory Notes, Drafts, Bills of Exchange, or of any other denomination whatever, which may be executed or drawn within the provinces subject to the Government of Fort St. George, from and after 1st day of January, 1809, for the payment of a sum of money exceeding sixteen rupees, exclusive of interest (excepting obligations which may be executed or drawn on the part of Government or for money payable to Government, and also excepting obligations for the rent of land paying revenue to Government), shall be written on stamped paper, subject to the following rates of duty to be specified in the respective stamps:—

				STAMP-DUTY.
1.	If the obligation be for a sum exceeding Rs. 16 and not above Rs. 64			Two annas.
		Rs.	Rs.	
2.	If exceeding 64 and not above 125		125	Four annas.
3.	" 125	"	250	Eight annas.
4.	" 250	"	500	One rupee.
5.	" 500	"	1,000	Two rupees.
6.	" 1,000	"	2,000	Four rupees.
7.	" 2,000			Eight rupees.

Cl. 2.—The stamps shall have an inscription in the Persian, Telegu, and Tamul languages and characters.

Section 10.—First.—From and after the 1st day of January 1809, all acknowledgments for the receipt of money, whereby any sum exceeding sixteen Arcot rupees shall be acknowledged to have been paid, received, accounted for, balanced, discharged, released, or in any manner satisfied, or which shall in any manner signify such acknowledgments (with an exception to all acknowledgments, granted on the part of Government, or for sums received from Government, and

also with an exception to all acknowledgments for the rent of land paying revenue to Government), shall be written on stamped paper, subject to the rates of duty specified in the preceding section upon obligations for the payment of money; and the stamps for the several receipts shall have the same inscription as have been prescribed for obligations.

Section 11.—First.—All original deeds for the Sale, Gift, Devise, or other Transfer of property, real or personal, all deeds of Mortgage, Assignment or Release and all other deeds of Contract and Agreement as well as other legal instruments of whatever denomination (with the exception hereafter noticed), which may be executed within the provinces subject to the Presidency of Fort St. George, from and after the first day of January, 1809, and also all copies of such deeds and instruments which may be prepared after the said date or legal vouchers, whether by a Cazee, Mooftee, or any other person, shall be written on stamped paper, subject to a duty of four annas, eight annas, one rupee or two rupees, according to the size of the paper which may be used for such original deeds or instruments or the copies of them.

Clause Second.—The several Stamps shall have an inscription in the Persian, Telugu, and Tamul languages and characters to the following effect :—

STAMP-DUTY.

Law Papers
or "
or "
or "

Two rupees.
One rupee.
Eight annas.
Four annas.

Section 12.—All Contracts and engagements which may be entered into for the provision of any part of the company's investment or for the manufacture of salt or opium, as well as deeds to which Government may be one of the contracting parties are exempted from duty.

MADRAS REGULATION XIII OF 1816.

(In force from the 12th July, 1817, upto 1st October, 1860).

Section 11.—*What instruments are to be written on stamped paper and how the value is to be regulated.*—From and after the date specified in the preamble to this Regulation, every bond, promissory note, bill of exchange, letter of credit, or other obligation for the payment of money—every receipt or acquittance, whereby any sum of money or demand shall be acknowledged to have been paid, received, liquidated, discharged, accounted for, or in any manner satisfied—every deed of gift, sale, devise or other transfer of property, real or personal—every lease, deed of mortgage, or other limited assignment of land,—every deed of contract, marriage, settlement, partnership, agreement, security, or engagement for a sum of money or for property exceeding the value of sixteen rupees, which may be executed within the provinces subject to the Presidency of Fort St. George, shall be written on paper (or some other material) impressed with the Government stamp, the value of which stamp shall be regulated as follows :—

1. If the bond or other instrument shall be for a sum exceeding 16 Arcot rupees, or if the value of the property transferred, or otherwise affected by it shall exceed Rs. 16 and not exceed Rs. 64 the deed shall be executed on stamped paper of the value of

Two annas.

	Rs.		Rs.	
2.	If above 64 and not exceeding 125			Four annas.
3.	" 125	ditto	250	Eight annas.
4.	" 250	ditto	500	One rupee.
5.	" 500	ditto	1,000	Two rupees.
6.	" 1,000	ditto	2,000	Four rupees.
7.	" 2,000	ditto	5,000	Eight rupees.
8.	" 5,000	ditto	10,000	Sixteen rupees.
9.	" 10,000	ditto	20,000	Thirty two rupees.
10.	" 20,000	ditto	50,000	Fifty rupees.
11.	" 50,000	ditto	1,00,000	Hundred rupees.
12.	" 1,00,000	...	...	One hundred and fifty rupees.

Section 12.—All pottas, Kabuliats, or other instruments relating to land held exempt from payment of revenue to Government, to be written on stamped paper.—*First.*—To prevent misconstruction, it is hereby declared that every lease and its counterpart or other kaboolyot or other engagement contracted between landlord and tenant, and every receipt of or other acknowledgment for the payment of rent exceeding sixteen rupees, is required to be written on paper or other material bearing the prescribed stamp supposing that such lease, receipt or other instrument relate to lands held exempt from the payment of revenue to Government, but that instruments of the correspondent descriptions which have relation to lands subject to the payment of revenue to Government, need not be written on stamps.

Second.—All authenticated copies of the documents specified in the preceding section which may be prepared as legal vouchers by a Canzy, Mufty, or other authorized person, shall be written on stamped paper or cadjan, according to the rates prescribed for the original of such deeds; and copies not written on such paper or cadjan will not be admissible in evidence under section IX of this regulation.

Third.—Security bonds for appearance (hazir-zamini), security-bonds for the payment of eventual costs of suits, as well as all other security bonds not being for a specific amount, and all deeds of contract, partnership or agreement, and engagements of whatever nature, which may not relate to a specific sum, or to a specific value, so as to make it practicable to apply to them the table of rates stated in the preceding section, are required to be written on stamped paper or stamped cadjan of the value of one rupee, under the penalty declared in section IX of this Regulation.

RULES FOR THE SALE OF STAMPS (BENGAL.)

The Calcutta Gazette Notification No. 6442 S. R. of
2nd December, 1899.

Calcutta Gazette, Part I, p. 1,498.

The following rules for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, the duties and remunerations of such persons were issued by the Government of Bengal under s.74 of the Indian Stamp Act, II of 1899, by Notification No. 6442 S. R. dated 2nd December, 1899.

I. According to the rules made by the Governor-General in Council under the Act, there are two kinds of stamp for indicating the payment of duty on instruments under the Indian Stamp Act, namely—

(1) Impressed stamps, including—

(a) Labels affixed and impressed by the proper officer.

(b) Stamps embossed or engraved on stamped paper.

(2) Adhesive stamps.

Stamp of class I (a) can be obtained only at the office of the Collector of Calcutta, in accordance with rules 9 to 11 of the Notification of the Government of India mentioned above. Stamps of class I (b) and class (2) shall be sold to the public through ex-officio or licensed vendors, in the manner hereinafter prescribed.

II. The Treasurers at the head-quarters of a District, and at subdivisions the subordinate officer entrusted with the custody and sale of stamps on behalf of Government shall be ex-officio vendors, and shall sell on behalf of Government stamps embossed or engraved, on stamped paper, and adhesive stamps to licensed vendors and to the public on application.

III. Such persons as may be licensed by the District officers shall be licensed vendors, and shall sell to the public such stamps as are indicated in their licenses.

IV. Every license shall specify the name of the licensee, the description of stamps which may be sold under the license, the place of vend, and such other matters as may be necessary, and shall be signed by the authority granting it. The license shall be revocable at any time by the authority who grants it.

V. Subject to rule VI, every licensed vendor who purchases from Government by payment of ready money, stamp embossed or engraved on stamped paper and adhesive stamps shall receive the same at a discount at the following rates :—

NON-JUDICIAL STAMPS.	At places where Stamps are sold by Government.		At other places.	
	Per cent.		Per cent.	
	RS.	A. P.	RS.	A. P.
<i>Adhesive—</i>				
Stamps not exceeding in value eight annas each	4	11 0	6	4 0
Exceeding eight annas but not exceeding Rs. 5 each	2	9 8	3	2 0
Exceeding Rs. 5 but not exceeding Rs. 50 each	1	9 0	1	9 0
<i>Impressed—</i>				
Hundi Stamps	3	10 1	1	11 0
Impressed stamp papers				

The rates of Rs. 4-11-0 and Rs. 2-9-8 per cent. which are included in the first of the two scales prescribed, shall in Calcutta be reduced to Rs. 3-2-0 per cent. and Rs. 1-9-0 per cent., respectively. The same reduction shall be made in the added Municipal area of Calcutta, comprising Ballygunj and parts of Tallygunj, Bhowanipur and parts of Alipur, Ekbalpore and Watganj as defined in Schedule III of Act III (B. C.) of 1899, the south suburban and Tallyganj Municipalities and the Municipalities of Garden Reach, Maniktola, Cossipore-chitpore, Baranagar, and Bally, in Patna City, in the towns of Gaya, Chapra, Darbhanga, Bhagalpur, Monghyr, and Cuttack, and in the sadar stations of the districts of Howrah, the 24-parganas and Hooghly.

VI. No discount shall be given on account of purchase of any stamp exceeding Rs. 50 in value, nor on any stamp supplied on material furnished by the purchaser himself. Discount shall not be allowed if the total value of the quantity of stamps purchased at one time does not amount to Rs. 25 or upwards.

VI. A (i) All stamps exceeding Rs. 50 in value required for a single instrument shall be purchased direct from the treasury.

(ii) No licensed stamp vendor shall sell to the public two or more stamps of lower values for use in place of one of a higher value than Rs. 50 required for the purpose of stamp duty on a single instrument.

(iii) Omitted.

(iv). Any infringement of these rules shall be punishable under S. 69 of the Indian Stamp Act.

RULES FOR THE SALE OF STAMPS (BENGAL)

VII. Licensed vendors alone are allowed discount on the purchase of stamps. No ex-officio vendor is allowed to purchase stamps at a discount for sale on his own account to the public.

VIII. No licensed vendor shall be supplied with stamps on credit without the special sanction of the Government.

IX. Every licensed vendor shall at all times have stuck up in a conspicuous place outside the place of vend, a sign-board bearing the name of the vendor, with the words "Licensed vendor of stamps" in English and the vernacular language of the district. He shall also have in the place of his vend, his license and the Acts of the Legislature and their Schedules referring to the stamps sold by him, together with these rules in English placed so that they can readily be seen and read by purchasers.

X. Every ex-officio or licensed vendor shall write at the time of sale in the vernacular language of the district, on the back of every stamp embossed or engraved on stamped paper which he sells, a serial number, the date of sale, the name and residence of the purchaser, and the value of the stamp in full in words and shall affix his signature to the endorsement. At the same time, he shall make corresponding entries in a register to be kept by him in the following form : --

Serial No. of	Date of sale.	Value of stamp.			Name and resi- dence of purchaser.	Remarks.
		Rs.	As.	P.		

No vendor shall knowingly make a false endorsement on the stamp embossed or engraved on stamp paper sold, or a false entry in his register.

Every licensed vendor shall submit his register at the end of each quarter to the District officer, or in a subdivision to the Subdivisional officer, for examination and deposit in his office.

XI. No ex-officio or licensed vendor shall take for any stamp more than the value denoted thereon, and every such vendor shall without delay deliver any stamp which he has in his possession for sale on demand by any person tendering the value in any currency which would be accepted on behalf of Government by the district officer.

XII. No licensed vendor shall sell any stamps the use of which has been ordered by competent authority to be discontinued.

XIII. Save with the general or special permission of Government a licensed vendor shall obtain all the supplies of stamps which he is authorised to sell only from the treasury of the district for which his license was granted, and shall sell stamps only at the place mentioned in his license.

XIV. Every ex-officio vendor shall keep and render such accounts as may be prescribed from time to time by Government.

XV. Every vendor shall allow the District officer or any officer duly authorised by him, or by the Local Government, and within the compounds belonging to Civil Courts, the District Judge or any Gazetted officer duly authorised by him at any time to inspect his accounts and registers and to examine the store of stamps in his possession.

XVI. Every licensed vendor shall, at any time on the demand of the District officer or other officer duly authorised by the Local Government, deliver up all stamps, or any class of stamps remaining in his possession.

XVII. In the following cases, the full value of the stamps returned into store, less one anna in the rupee shall be paid to the stamp vendors :—

- (a) when the vendor resigns his license ;
- (b) when the license is revoked for any fault of the licensee ;
- (c) when the stamps are returned on the death of the vendor ;
- (d) where the stamps are returned on the application of the vendor for leave to restore any stamps.

In the following cases, the full value of the stamps returned into store less only the discount allowed on their sale shall be paid to licensed vendors :—

- (a) when stamps are returned on expiry of the license ;
- (b) when they are recalled by the Government ;
- (c) when the license is revoked for any cause other than the fault of the licensee.

Provided that a licensed vendor may exchange unsold stamps which are fit for use for other stamps of the same kind.

XVIII. When a stamp embossed or engraved on stamped paper is required for any instrument, a single sheet is to be issued of the required value. But if a single stamp of the required value is not available, the number of sheets issued in order to indicate the payment of duty is not to exceed the smallest number which can be furnished, so as to make up the required amount.

XIX. When the application for the required stamp is made to a licensed stamp vendor, and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect to the purchaser. In making the certificate, such vendor must declare truly (1) that he is unable to furnish a single stamp of the required amount, and (2) that the number of sheets furnished is the smallest number that he can supply, so as to make up the required amount.

XIX. (a) No such certificate is required under similar circumstances from an official stamp vendor, but the latter should carefully observe the same principle of issuing, whenever practicable, a single stamp of the required value, or when, from any reason, this is not possible, of furnishing the smallest number of stamps which may make up the required value.

XX. These rules shall come into force from the date of publication of this Notification.

XXI. Nothing in the above rules shall be held to restrict the sale of one-anna or half-anna adhesive stamps.

* The following form is prescribed for the vendor's certificate mentioned in the above rule XIX :—

"Certified that a single stamp of the value of Rs. required for this document is not available, and that the smallest number of stamps which I can furnish so as to make up the required amount is as follows....."

RULES FOR THE SALE OF STAMPS

BIHAR AND ORISSA.

Notification No. 26-7-4 of the 8th August, 1919 by the Board of Revenue as Chief Controlling Revenue Authority under powers delegated by the Government of Bihar and Orissa.

• *Bihar and Orissa Gazette, dated 13th August, 1919.*

1. Stamps for indicating the payment of duty on instruments under the Indian Stamp Act, whether impressed or adhesive, shall be sold to the public through *ex-officio* or licensed vendors in the manner hereinafter prescribed.

Stamps to be sold through *ex-officio* or licensed vendors.

Notification No. 1140-F, dated the 14th August, 1914.

Note.—According to the rules made by the Governor-General in Council under the Act, there are two kinds of stamps for indicating the payment of duty on instruments under the Indian Stamp Act, namely—

(1) Impressed stamps, including—

(a) labels affixed and impressed by the proper officer ;

(b) stamps embossed or engraved on stamped paper ;

(2) Adhesive stamps.

Stamps of class I (a) can be obtained only at the office of the Collector of Calcutta, in accordance with rules 4 (1) (b) and 9 to 11 of the Notification of the Government of India No. 1140-F., dated the 14th August, 1914.

APPOINTMENT OF, AND SUPPLY OF STAMPS TO, VENDORS

2. The Treasurer at the head-quarters of a District, and at subdivisions the subordinate officer entrusted with the custody and sale of stamps on behalf of Government, shall be *ex-officio* vendors, and shall sell on behalf of Government stamps embossed or engraved on stamped paper and adhesive stamps to licensed vendors and to the public on application.

No *ex-officio* vendor is allowed to purchase stamps at a discount for sale on his own account to the public.

3. Collectors are authorised to grant licenses to private persons for the sale of stamps.

Licensed stamp vendors. Licenses may be granted to Postmasters with the consent of the Postmaster-General.

NOTE.—In order that the Public may be provided with every facility for readily obtaining stamps in outlying localities where

otherwise stamps might not always be easily available, licenses for the sale of stamps of every description should be granted to any respectable and reasonably substantial person who wishes to sell them either as a special business or as an additional to some other business which he carried on. At district and sub-divisional head-quarters and in large towns where vendors are readily found, the number of them should be such as to offer reasonable facilities to the public, but it should be limited so as to allow of a moderate income from the sale of stamps being derived by each.

4. Every license shall specify the name of the licensee, the description of stamps which may be sold under the license, the place of vend, and such other matters as may be necessary, and shall be signed by the authority granting it. The license shall be revocable at any time by the authority who grants it.

5. Licensed vendors shall not sell stamps of any description or at any places other than the description and places mentioned in their licenses and no licensed vendor shall sell any stamps the use of which has been ordered by competent authority to be discounted.

6. Every licensed vendor shall, at any time, on the demand of the Collector or any officer duly authorized by him, deliver up all stamps, or any class of stamps, remaining in his possession.

7. A Licensed vendor shall obtain all the supplies of stamps which he is authorized to sell only from the treasury or a sub-treasury of the District for which his license was granted.

No licensed vendor shall be supplied with stamps on credit without the special sanction of Government.

8. Subject to rule 9 every licensed vendor who purchases from Government, by payment of ready money, stamps embossed or engraved on stamped paper, and adhesive stamps, shall receive the same at a discount at the following rates:—

	At places where Stamps are sold by Government. Per cent.	At other places. Per cent.
	Rs. A. P.	Rs. A. P.
<i>Adhesive</i> —		
Stamps not exceeding in value eight annas each	4 11 0	6 4 0
Exceeding eight annas but not exceeding Rs. 5 each	2 9 8	3 2 0
Exceeding Rs. 5 but not exceeding Rs. 50 each	1 9 0	1 9 0
<i>Impressed</i> —		
Hundi Stamps	4 11 0	6 4 0
Impressed Stamp papers...		

The rates of Rs. 4-11-0 and Rs. 2-9-8 per cent. which are included in the first of the two scales prescribed shall, in Patna City, in the towns of Gaya, Chapra, Darbhanga, Bhagalpur, Monghyr and Cuttack, be reduced to Rs. 3-2-0 per cent. and Re. 1-9-0 per cent., respectively.

9. No discount shall be given on account of the purchase of any stamp exceeding Rs. 50 in value, nor on any stamp applied on material furnished by the purchaser himself. Discount shall not be allowed if the total value of the quantity of stamps purchased at one time does not amount to Rs. 25 or upwards.

10. (1) In the following cases the full value of the stamps returned into store, less one anna in the rupee, shall be paid to the stamp vendors:

- (a) When the vendor resigns his license.
- (b) When the license is revoked for any fault of the licensee.
- (c) When the stamps are returned on the death of the vendor.
- (d) When the stamps are returned on the application of the vendor for leave to restore any stamps.

(2) In the following cases the full value of the stamps returned into store, less only the discount allowed on their sale shall be paid to licensed vendors:—

- (a) When stamps are returned on expiry of the license.
- (b) When they are recalled by Government.
- (c) When the license is revoked for any cause other than the fault of the licensee:

Provided that a licensed vendor may exchange unsold stamps, which are fit for use, for other stamps of the same kind.

Stamps may be exchanged.

11. Every vendor shall allow the Collector or any officer duly authorized by him, or by the Board of Revenue (and within the compounds belonging to Civil Courts, the District Judge or any Gazetted officer duly authorized by him) at any time to inspect his accounts and registers, and to examine the store of stamps in his possession.

DUTIES OF VENDORS.

- 12. Every licensed vendor shall at all times have stuck up, in a conspicuous place outside the place of vend. a signboard bearing the name of vendor, with the words "*Licensed Vendor of Stamps*" in the vernacular language of the district. He shall also have on view in the place of vend his license, and the Acts
- Licensed vendor to exhibit signboard license etc.

of the Legislature and their Schedules referring to the stamps sold by him together with these rules in the vernacular (and also in English when the Collector so directs), so that they can readily be seen and read by purchasers.

13. Every *ex-officio* or licensed vendor shall write at the time of sale in the vernacular language of the district on the back of every stamp embossed or engraved on stamped paper which he sells, a serial number, the date of sale, the name and residence of the purchaser, and the value of the stamp in full, in words, and shall affix his signature to the endorsement, and at the same time, he shall make corresponding entries in a register to be kept by him in the following form :—

Serial number of	Date of sale.	Description of stamps.	Name and residence of purchaser.	Remarks.
1	2	3	4	5
		Rs. a. p.		

No vendor shall knowingly make a false endorsement on the stamp embossed or engraved on stamp paper sold, or a false entry in his register.

14. Every licensed vendor shall submit this register once in every three months to the Collector or in a subdivision to the Subdivisional officer for examination and signature, and shall make it over at the end of the year to the Collector or Subdivisional officer, as the case may be, for deposit in his office.

15. No *ex-officio* or licensed vendor shall take for any stamp more than the value denoted thereon, and every Overchange strictly prohibited. such vendor shall without delay deliver any stamp which he has in his possession for sale on demand by any person tendering the value in any currency which would be accepted on behalf of Government by the Collector.

16. When a stamp embossed or engraved on stamped paper is required for any instrument, a single sheet is to be issued of the required value. But if a single stamp of the required value is not available, the number of sheets issued in order to indicate the payment of duty is not to exceed the smallest number which can be furnished, so as to make up the required amount.

17. When the application for the required stamp is made to a licensed stamp vendor, and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect to the purchaser in the form below. In making the certificate, such vendor must declare truly (1) that he is unable to furnish a single stamp of the required amount, and (2) that the number of sheets furnished is the smallest number that he can supply, so as to make up the required amount.

FORM OF CERTIFICATE.

"Certified that a single stamp of the value of Rs. required for this document is not available, and that the smallest number of stamps which I can furnish so as to make up the required amount is as follows.....

No such certificate is required under similar circumstances from official stamp vendors but they shall, as far as practicable, follow the above instructions.

FORM OF LICENSE FOR THE VENDOR OF STAMPS UNDER ACT II OF 1899.

To
son of

resident of

You are hereby authorized, agreeably to the provisions of the rules issued by the Board of Revenue under section 74 of Act II of 1899, read with Section 76-A of the said Act and Bihar and Orissa Government Notification No. 9063.F., dated the 9th July, 1915, to sell general stamps under the conditions herein set forth at.....

1. Adhesive stamps, and stamps embossed or engraved on stamped paper used under the Indian Stamp Act of 1899, of value not exceeding Rs. 50 each shall only be sold under this license; these you shall obtain only from the Government Treasury at.....

2. You will note on the back of every stamp embossed or engraved on stamped paper you sell the serial number, date of sale, name and residence of the purchaser, and in the vernacular language of the district the value of the stamp in full, in words, and affix your signature to this endorsement. These particulars you will also note in your sale register, to be kept in such form as may be from time to time prescribed.

3. You shall keep the register above referred to in volumes, and commence a new one every year. In the beginning of each volume you shall enter your name, the date from which it is in use and the number of pages it contains, each page being numbered. You shall submit this register to the Collector, or, in a subdivision, to the Sub-divisional Officer, for the purpose of being examined and signed by him every three months, and at the end of each year you shall make it over to him to be deposited in his office.

4. You shall not knowingly make a false endorsement on a stamp sold or a false entry in your register.

5. You are required to deliver any stamp in your possession for sale that may be demanded on tender of its value in Government coin or currency notes.

6. You shall not sell any stamps, the use of which has been ordered by competent authority to be discontinued, or take for any stamp more than the value denoted thereon.

7. You shall at all times have posted in a conspicuous position outside the place of vend a signboard bearing your name with the words *Licensed Vendor of Stamps* in English and in the vernacular language of the district. You shall also have on view in the place of vend your license; and you shall have there, for ready reference by the purchasers, the Acts of the Legislature and their Schedules referring to the stamps sold by you, together with rules for regulating the sale of general stamps framed under section 71 of the Indian Stamp Act in the said vernacular (and in English also when so directed by the Collector), placed so that they can readily be seen and read by purchasers.

8. You shall keep and render such accounts as may be prescribed by the Board of Revenue and shall allow the Collector or any other person duly authorized by him, or by the Board of Revenue, and, within the compounds belonging to the Civil Courts, the District Judge or any gazetted officer duly authorized by him, at any time to inspect such accounts and the register already referred to and to examine the store of stamps in your possession.

9. Your license is revocable without cause shown at any time and any infraction of these conditions is punishable under section 69 of Act II of 1899.

Dated
District of

Collector,
or Deputy Commissioner.

RULES FOR THE SALE OF STAMPS BOMBAY.

Bombay Government Notification, No. 758 of
17th January, 1910.

Bombay Government Gazette, Part I, page 189.

1. For the purposes of these rules stamps are divided into—

(1) Impressed stamps including—

- (a) labels affixed and impressed by the proper officer ;
- (b) stamps embossed or engraved on stamped paper.

(2) Adhesive stamps.

Stamps of class (1) (a) can be obtained only at the offices of the Superintendents of Stamps, Bombay, Karachi and Aden, and such labels shall be affixed and impressed as laid down in rules 9 to 11 of the rules published in the Notification of the Government of India in the Finance Department No. 3632-Exc. dated the 29th June 1906. Stamps of class (1) (b) and class (2) shall be sold to the public by *ex-officio* or licensed vendors in the manner hereinafter prescribed.

II. Adhesive stamps shall be sold as follows :—

(a) United half-anna and one-anna stamps and Foreign Bill and Share Transfer stamps and stamps on instruments chargeable with stamps duty under Article 47 of Schedule I, by *ex-officio* and licensed vendors ;

(b) Stamps of Notarial acts, by *ex-officio* vendors only.

III. (1) Government may appoint certain officers to be *ex-officio* stamp vendors.

(2) *Ex-officio* stamps vendors shall, subject to rules I and II, sell such stamps as may be directed.

(3) The Treasurer of each local treasury and sub-treasury shall be an *ex-officio* stamp vendor.

IV. (1) In the Presidency Town there shall be two *ex-officio* vendors of stamps who shall be members of the establishment of Stamps, Bombay.

(2) One such *ex-officio* vendor shall sell only stamps embossed or engraved on stamped paper and hundi papers with labels affixed and impressed by the proper officer.

(3) The second *ex-officio* vendor shall sell adhesive stamps.

V. (1) The Collector or any other officer empowered by Government in this behalf may appoint certain persons to be licensed stamp-vendors.

(2) Licensed stamp vendors shall, subject to rules I and II, sell such stamps of such values as may be indicated in their licenses.

VI. Whenever it is deemed necessary for the convenience of the public that a license should be granted for the sale of stamps embossed or engraved on stamped paper of the value of Rs. 50 or upwards, sanction of Government shall be obtained.

VII. Every license granted under Rule V shall be in the following form :—

"To (here enter name of licensee)

License No.....granted under the Indian Stamp Act, 1899, Bombay, Dated 192 .

You are hereby authorised to sell stamps of the following description (that is to say) *(here insert description of stamps)* at *(here insert the No. of the house and name of street, &c., at which the stamps are to be sold)* in the *(here enter place)* subject to the provisions of the Indian Stamp Act, 1899, and the rules from time to time in force thereunder.

(Signed) Collector

(or other officer empowered under Rule V.)

VIII. Every license shall be revocable at any time by Government or by the authority who granted it.

IX. (1) The following rates of discount shall be allowed to licensed vendors :—

KIND OF STAMP.	At places where Stamps are sold by ex-officio vendors.		At other places.	
	Per cent.		Per cent.	
	Rs.	A. P.	Rs.	A. P.
<i>Adhesive stamps.</i> —				
On stamps not exceeding in value eight annas each in quantities of not less than Rs. 5 in amount ...	4	11 0	6	4 0
On stamps exceeding in value 8 annas each, but not exceeding in value Rs. 5 each in quantities of not less than Rs. 50 in amount ...	2	9 8	3	2 0
On stamps exceeding in value Rs. 5 each, but not exceeding in value Rs. 50 each in quantities of not less than Rs. 100 in amount...	1	9 0	1	9 0
Stamps embossed or engraved on stamped paper (including such stamps bearing the word "Hundi")	4	11 0	6	4 0

(2) In the Presidency Town the rates of Rs. 4-11-0 and Rs. 2-9-8 per cent. specified in the first and second items in column 2 of the above table shall be reduced respectively to Rs. 3-2-0 and Re. 1-9-0 per cent., and Government may, at their discretion, direct that the same reduction be made in the case of any town with a population of 50,000 inhabitants or over.

(3) Licensed vendors will not be allowed any discount on the purchase of stamps embossed or engraved on stamped paper exceeding in value Rs. 50 each.

(4) No discount shall be granted on the sale of stamps to the public.

X Every licensed vendor shall keep in a conspicuous position outside his place of vend, a signboard bearing, in English and in the vernacular language of the district, his name and the words "Licensed Vendor of Stamps." He shall also have in his place of vend, placed so that they can readily be seen and read by purchasers, copies of the Indian Stamp Act and of the rules thereunder in English and the said vernacular, with copies of all Notifications of the Governor-General in Council modifying the stamp duties.

XI. (1) Every *ex-officio* or licensed vendor shall with his own hand write on the back of every stamp embossed or engraved on stamped paper which he sells a serial number, the date of sale, the name and residence of the purchaser, the value of the stamp in full in words, and his own ordinary signature; at the same time he shall make corresponding entries in a register to be kept by him in the following form :—

Date.	Serial Number.	Description of stamp.	Value of Stamps.	Name of Purchaser.	Residence of Purchaser.

(2) No vendor shall knowingly make a false endorsement on the stamp sold or a false entry in his register.

NOTE.—For the purposes of these rules the purchaser shall be deemed to be the person taking delivery of the stamps.

XII. Notwithstanding anything in rule XI, when an *ex-officio* stamp vendor, or a licensed stamp vendor specially authorized for the purpose of this rule, sells more than 50 stamps embossed or engraved on stamp paper of any one description and value on one and the same day to one and the same purchaser, the date of sale, the name and residence of the purchaser and the value of each such

stamp may, instead of being written by the vendor, be printed or stamped on each such stamp. The Collector of the District, or in the Presidency town, or in the town of Karachi the Superintendent of Stamps, is empowered to authorise licensed stamp vendors for the purpose of this rule.

XIII. (1) Every stamp-vendor shall, whenever any person purchases a stamp embossed or engraved on stamped paper invite the purchaser to affix his thumb impression under the vendor's endorsement of sale on the stamp and also opposite the entry of the sale in his register (*vide* Instructions printed Appendix A below).

(2) No new license to sell stamps embossed or engraved on stamped paper shall be granted, and no expired license shall, after a time to be specified in this behalf, be renewed, except on satisfactory proof that the applicant or licensee can take a clear thumb impression.

XIV. (1) Whenever application is made to a stamp-vendor for stamp embossed or engraved on stamped paper of a specified value and not exceeding the highest value which such stamp-vendor is authorized to sell, he shall, if he is able, furnish a single stamp of the required value.

(2) If the stamp-vendor is unable to furnish a single stamp embossed or engraved on stamped paper of the required value, he shall supply the purchaser with the smallest number of such stamps which he can furnish so as to make up the required value.

XV. Nothing in rule XIV shall be deemed to authorize a stamp-vendor, when the value of the stamp required exceeds the highest value which he is authorized to sell, to furnish a purchaser with two or more stamps in order to make up any such value.

XVI. Every licensed vendor shall, without delay, deliver any stamp which he has in his possession for sale on demand by any person tendering the value thereof in any currency which would be accepted on behalf of Government by the Collector of the district. A licensed vendor shall not demand or accept for any stamp any consideration exceeding the value of such stamp.

XVII. No vendor shall sell any stamps the use of which has been ordered by competent authority to be discontinued.

XVIII. Except at the Presidency Town, the accounts to be kept and rendered by licensed vendors shall be in accordance with the forms prescribed in Hope's Manual of Revenue Accounts or by Government.

XIX. At the Presidency Town each licensed vendor shall keep a book, showing in detail the supplies purchased from the Stamp Office and the daily sale. At the close of each month he shall submit to the Superintendent of Stamps a statement in the form of Appendix B.

XX. (1) All licensed vendors shall execute a security bond in the form given in Appendix C.

(2) The amount of the security shall be fixed in each case by the Collector or other authority who grants the license, but as stamps will ordinarily only be supplied to the licensees on payment of ready money, it need not be excessive.

XXI. No licensed vendor shall at any time offer any objection or resistance to inspection of his register or the examination of his stock or stamps by any officer duly authorized by the Collector or by Government to make such inspection or examination.

XXII. (1) A licensed vendor—

(a) may deliver up any stamps in his possession either on application for leave to do so or on resigning his license, and

(b) shall deliver up all stamps embossed or engraved on stamped paper remaining in his possession on demand made at any time by the Collector or other officer duly authorised by Government in his behalf.

(2) Payment of the value of stamps paid for by a licensed vendor and delivered up shall be made subject to deductions as follows, viz.,—

(a) A deduction of one-anna in the rupee of the full value of all stamps delivered up in the circumstances as follows, viz.,

(i) on resignation by the vendor of his license ;

(ii) on revocation of the license for any fault on the part of the licensed vendor ;

(iii) on the death of the licensed vendor ;

(iv) on application by the licensed vendor for leave to return any stamps in his possession.

(b) A deduction only of the discount, if any, allowed on purchase by the vendor on stamps delivered up in the circumstances following, viz.,—

(i) on the expiration of the license ;

(ii) on the recall of the stamps by Government ;

(iii) on the revocation of the license for any cause other than a fault on the part of the licensee.

Provided that application for a refund of the value of stamps delivered up under this rule shall be made within two years of the date of the resignation or death of the licensed vendor or the revocation of the license.

XXIII. A licensed vendor shall be permitted to exchange any stamps which are in the opinion of the Collector or other officer duly authorized by Government in this behalf fit for use but for which there is no immediate demand, for other stamps of a like aggregate value.

XXIV. Every licensed vendor shall keep an adequate supply of one-anna and half-anna unified stamps for sale to the public.

APPENDIX A (*See* Rule XIII).

Instructions to stamp-vendors in connection with the taking of the thumb impressions of purchasers of stamped papers.

1. Every purchaser of stamp embossed or engraved on stamped paper should be invited to affix the rolled impresson of the ball of his left thumb on the stamp itself below the vendor's endorsement of the sale on the back of the stamp and also opposite the sale entry in the vendor's sale register.

Proviso—No impression should be taken in the following cases :—

(a) When the purchaser is literate and is personally known to the stamp-vendor ;

(b) When the purchaser is a European lady or gentleman or other person of position regarding whose identification there can be no doubt or room for suspicion.

Note,—*Pardanashin* ladies also should in all cases be invited to affix the impression of their thumb mark.

2. If a purchaser has lost his left thumb, or if his left thumb is so deformed or diseased that he cannot use it, the impression of the bulb of his right thumb or of any finger may be taken instead. In such cases a note should be made below the impression stating which finger of the left hand, or thumb or finger of the right hand has been used in making it, and explaining why the impression of the left thumb was not taken. The fingers of the hand should be described (commencing with that next the thumb) as the first or forefinger, the second or middle finger, the third or ring-finger, and the fourth or little-finger.

3. In the case of the purchasers at the Bombay Stamp Office, when the purchaser is recognized as a representative of, or is a peon bringing a written order from, a public body or known firm, it will be sufficient if the representative's or peon's thumb mark is taken in the register, and it will not be necessary to take it on the stamps. When the purchaser is not so known, his impression should be taken both in the register and on the stamp. This rule will apply to Karachi and to such other headquarter stations in the Presidency as Government may from time to time direct.

4. Ex-officio stamp-vendors will be supplied by the Stationery Department on indent with one or two tin slabs, a roller and printing ink. A drop or two of printing ink should be put on the plate and by means of the roller and with the aid of a drop or two of kerosine oil it should be spread over the plate evenly. The layer of ink should not be so thick as not to allow the colour of the plate to show through it. The purchaser's left hand should be taken and the ball of the thumb after being wiped should be laid on the ink plate and rolled

from side to side (not rubbed) and impressed gently but firmly with the operator's own hand until sufficiently inked, and the inked thumb should then be placed and lightly and carefully rolled on the paper on which the impression is to be taken in such a way that the pattern of the whole ball of the thumb from side to side is clearly impressed on it. The thumb should be inked afresh for each impression. It must be specially borne in mind that any reverse movement either at the time of applying or removing the thumb will cause a smudge and spoil the impression.

5. The affixing of a thumb impression should be carried out under the immediate personal supervision of the stamp-vendor, who should affix his initials against each impression.

6. The roller must, when not in use, be hung up by the handle, the barrel not touching anything and left in a cool place. In the morning following the day on which the roller has been used it should be cleaned by being first washed in water with washing soda dissolved in the latter and finally by being washed in water alone.

APPENDIX B (See Rule XIX).

Account of.....Licensed Stamp Vendor at.....No.....

Date.		STAMPS EMBOSSED OR ENGRAVED ON STAMPED PAPER.				Total
		Ordinary.		Bearing the word "Hundi"		
		Number of Papers.	Amount.	Number of Papers.	Amount.	
	Balance					
	Received as per Indent of ...					
	Ditto ditto					
	Ditto ditto					
	Total ...					
	Sold during the month ...					
	Balance ..					

APPENDIX C (See Rule XX).

Know all men by these presents that we A. B. resident of.....
....., and C. D. resident of.....and E. F.
resident of.....are jointly and severally held and firmly-bound

unto the Secretary of State for India in Council in the sum of Rupeesof good and lawful money current in Bombay, to be paid to the said Secretary of State, or his certain Attorney, agents, successors, or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us, and our respective heirs, executors, administrators, and representatives, by these presents. Sealed with our respective seals. Dated this.....day of..... in the year of Christ One thousand Nine hundred and.....

Whereas according to the provisions of the rules in this behalf framed under section 74 of the Indian Stamp Act, 1899, the above bounden A. B. has been duly appointed to vend at.....in thecertain stamps on the part of the Government, and whereas the above bounden C. D. and E. F. have agreed to join with the said A. B. in the above written bond or obligation subject to the conditions hereunder written, as the surety or sureties of the said A. B. for his strict observance, for and during all the time that he the said A. B. has been or shall continue to be such vendor of stamps, of the duties of his said office, and of all and every the rules authorised by or referred to in the said Act to be observed by all vendors of stamps according to the true intent and meaning of the said Rules, and every of them; and also for his the said A. B.'s strict observance, for and during all the time that he shall continue to be such vendor of stamps, of such future acts, with such penalty, and after such form as may be required by the Collector of.....Now the condition of the above written bond or obligation is such, that if the above bounden A. B. has, for and during all the time that he the said A. B. has been such vendor of stamps as aforesaid, well, truly, faithfully, and diligently done, executed and performed, and do and shall, for and during all the time that he the said A. B. shall continue vendor of stamps, well, truly, faithfully, and diligently do, execute, and perform all and every duties belonging to the said office of vendor of stamps, and has faithfully, justly, and exactly observed, performed, fulfilled, and kept, and shall faithfully, justly, and exactly observe, perform, fulfil, and keep all and every the rules mentioned or referred to in the said Act to be observed by all vendors of stamps according to the true intent and meaning of the said rules and every of them; and also if the said A. B. shall well and truly observe, perform, fulfil, and keep such future acts, with such penalty and after such form as may be required by such Collector of.....according to the true intent and meaning of the said last mentioned Act: and if the said A. B. his heirs, executors or administrators shall indemnify and keep and save harmless the said Secretary of State for India, his successors and assigns, of and from all loss and losses, damage and damages, which has or have happened or accrued to, or been sustained by him the said Secretary of State for India, or which may or shall happen or accure to, or be at any time or times sustained by him, the said Secretary of State for India, his successors, or assigns, by, from, or through, or by the means of the neglect, default, insolvency, or misconduct of him the said A. B. his executors, or administrators or agents or his or their executors or administrators, not fully accounting for and paying to the said Secretary of State for India, his successors or assigns, what may be justly due and owing to him by the said A. B. as vendor of stamps as aforesaid, or through or by means of

the neglect, misconduct, omission, or insolvency of the said A. B. as such vendor of stamps as aforesaid ; and also shall well and truly pay or cause to be paid into the hands of the Collector of.....for the time being, or to such other officer or person as the Government of Bombay shall from time to time direct or appoint, any penalties, forfeitures, dues or other sum or sums of money which now have been, or shall, or may be at any time hereafter incurred, or any penalties which may become payable by the said A. B., as such vendors of stamps, under or by virtue or by reason of the said Rules, or by any of them or by any such future Rule or Act, Rules or Acts, as shall hereafter be in that behalf passed in due form of law, relating to the said duties of stamp vendors when and so often as all or any such penalties, forfeitures, dues and other sum or sums of, money shall be so incurred or become payable by the said A. B. then this obligation to be void and of no effect, but otherwise to be and remain in full force and virtue.

Signed, Sealed, and

Delivered at.....

In our presence.....

.....

.....

.....

Signed A. B.

C. D.

E. F.

RULES FOR THE SALE OF STAMPS, BURMA.

Government of Burma, Financial Department Notification No. 9, dated the 25th February, 1909.

In exercise of the power conferred by section 74 of the Indian Stamp Act, 1899 (II of 1899).....the Governor makes the following rules for regulating the sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted and the duties and remunerations of such persons.

1. For the purpose of these rules stamps are divided in four classes namely :—

(1) Impressed stamps other than impressed labels and hundi stamps.

(2) Adhesive labels of the value of four annas, two annas, one anna, half an anna or as referred to in Rule 16 of the Rules published in the Government of India, Finance Department (Central Revenues) Notification No. C-63-stamps-25, dated the 5th May, 1925.

(3) All other adhesive stamps authorised by Section 11 of the Indian Stamp Act, 1899.

(4) Hundi stamps.

2. Stamps shall not be sold except (a) by *ex-officio* vendors : (b) by persons licensed under these rules, hereinafter called "licensed vendors," provided that nothing in this rule shall restrict the sale of half-anna stamps and one-anna stamps.

3. *Ex-officio* vendors are appointed under, and their duties are defined in, executive instructions, Rules 24 to 27 also apply to them.

4. Licenses for the vend of stamps shall be granted, without payment of any fee, by the Deputy Commissioner to such persons and for such places in the district as he may approve.

Provided that no such license shall be granted to Post Master stationed at the Headquarters of a District or Township.

5. Every circle *thugyi* or village headman shall be bound, if so required by the Deputy Commissioner, to take out a license as vendor of stamps, or to provide a substitute approved by the Deputy Commissioner. The Head Clerk of every Sub-Division or Township Officer, except at the headquarters of districts, shall, if so required by the Deputy Commissioner, be bound to take out a license. The rules as to the grant and revocation of licenses and the conditions of the issue of stamps apply to vendors appointed under this rule.

6. Any licenses granted under Rule 4 or Rule 5 may be revoked by the Deputy Commissioner or by any Revenue Officer of a grade superior to the Deputy Commissioner ; but, subject to this condition

every license shall be in force until it is surrendered by the holder or until the holder's death.

7. Stamps held by a licensed vendor shall be returned to the Deputy Commissioner on the revocation of the license, or on the vendor's death or on the vendor's resignation of his license. The Deputy Commissioner may recall any stamps held by a vendor and may permit a vendor to restore any stamps for sufficient cause.

8. (1) When stamps are returned into the Deputy Commissioner's store on—

- (i) resignation of the vendor's license ;
- (ii) revocation of license for any fault of the licensee ;
- (iii) death of the licensed vendor ;
- (iv) application of the licensed vendor for leave to restore any stamps ;

the stamps shall be taken back at their full value less a deduction of one anna in the rupee.

(2) When stamps are returned into the Deputy Commissioner's store on—

- (v) expiration of license ;
- (vi) recall of stamp by Government ;
- (vii) revocation of license for any other cause than the fault of the licensee.

they shall be taken back at their full value less only any discount allowed on their sale to the licensed vendor.

9. In every license shall be specified the place or places at which the license-holder is permitted to vend stamps and no vendor shall sell stamps at any place or places other than those mentioned in his license.

10. A register of license granted shall be kept in the office of the Deputy Commissioner and copies of every license issued shall be filed in the offices of the Sub-Divisional Officer and the Township Officer in whose jurisdiction the holder resides.

11. Licenses shall be issued to licensed vendors in Form A and such vendors shall pay in cash for the stamps procured by them.

12. In exceptional cases Deputy Commissioners may make small cash advances not exceeding Rs. 10, in any one case to licensed vendor who live in places where the sale of stamps is small and needs to be stimulated.

13. *Cancelled.*

14. (1) Every licensed vendor who purchases stamps of the kinds authorised by his license from an *ex-officio* vendor, shall receive the same at the following rates of discount :—

	Vendors residing at places where stamps are sold by Govern- ment.	Vendors residing at other places.
	Per cent.	Per cent
(i) Adhesive. Stamps, other than half-anna and one -anna-stamps, not exceeding in value eight annas each	Rs. A. P. 4 11 0 or 9 pies per rupee	Rs. A. P. 6 4 0 or 1 anna per rupee
(ii) Exceeding 8 annas but not exceeding Rs. 5 each	Rs. A. P. 2 9 8 or 5 pies per rupee	Rs. A. P. 3 2 0 or 6 pies per rupee
(iii) Exceeding Rs. 5 but not exceeding Rs. 50 each	Rs. A. P. 1 9 0. or 3 pies per rupee	Rs. A. P. 1 9 0 or 3 pies per rupee
Hundi stamps Impressed stamp papers	Rs. A. P. 4 11 0 or 9 pies per rupee	Rs. A. P. 6 4 0. or 1 anna per rupee

(2) No discount shall be allowed under this rule on the sale of any single stamps exceeding Rs. 50 in value, or when the total value of the stamps of each class purchased at one time is less than Rs. 3 in the case of thugyis and village headmen, or less than Rs. 10 in other cases.

15. *Cancelled.*

16. Licensed vendors may draw their supplies from the *ex-officio* vendor at a treasury or sub-treasury

17. Every licensed vendor who is a person bound to take out a license under Rule 5, or who is a substitute provided by any such person, shall keep such stock of stamps as he may be required to keep by order of the Deputy-Commissioner of the district.

18. At the time of the issue of his license every licensed vendor shall declare the treasury or sub-treasury from the *ex-officio* vendor of which he desires to draw his supplies. The name of the said treasury or sub-treasury shall be entered in the license and may be changed at any time by the Deputy Commissioner at the wish of the vendor. No licensed vendor shall obtain stamps from any treasury or sub-treasury other than that mentioned in his license.

19. *Cancelled.*

20. No licensed vendor shall be required to keep any register or to make any endorsement or enfacement on any stamp, or keep or render any account, other than such as may be expressly prescribed by these rules.

21. When application is made to a licensed vendor for a stamp of a value exceeding Rs. 50, he shall refer the applicant to the *ex-officio* vendor from whom he obtains his supplies under Rule 16.

22. Every licensed vendor shall allow the Deputy Commissioner of the district or other officer duly authorised by him or by the Local Government or any Revenue Officer of, or superior to, the grade of Township Officer at any time to inspect the register which he is required to maintain by Rule 25, and to examine the store of stamps in his possession.

23. Every licensed vendor shall without delay deliver any stamp which he has in his possession for sale on demand by any person tendering the value thereof in any currency which would be accepted on behalf of Government at a Government Treasury, and he shall not demand or accept therefor any consideration exceeding the nominal value of the stamp.

24. Every licensed vendor shall exhibit conspicuously at his place of vend a signboard bearing his name and the words 'Licensed vendor of stamps' and every vendor shall be supplied, free of charge, by the Deputy Commissioner, with copies, in English and Burmese, of the Indian Stamp Act, 1899, and of all such notifications, rules, and instructions, published under, or relating to, the said Act, as concern him, and shall allow any person to inspect the same. Such copies shall be renewed at the expense of the vendor, and every vendor shall be required to keep serviceable copies of the said Act, notifications, rules and instructions abovementioned.

25. Every vendor or his agent, if the vendor is permitted by the Deputy Commissioner to appoint an agent, shall endorse on each stamp of class (1) which he sells the following particulars, which shall be true and accurate to the best of his knowledge :—

(a) A serial number, there being a separate series for such calendar year.

(b) Date of sale.

(c) Name, father's name, and residence of purchaser.

(d) Value of stamp in full in words.

(e) His ordinary signature.

He shall forthwith make a corresponding true entry of the above-noted particulars in a register to be kept in Form D, and shall also enter the particulars required in the last column thereof : provided that, when an *ex-officio* vendor sells stamps of class (1) to a licensed vendor, no such endorsement or entry shall be made.

26. When a person applies to an *ex-officio* or licensed vendor for an impressed sheet the vendor shall, subject to the provisions of Rule 21, supply the applicant with a single impressed sheet of the required value if he has a single sheet of such value in stock; if he has no single sheet of the required value in stock, he shall, subject also to the provisions of Rule 21, supply the applicant with the smallest number of sheets which he can furnish so as to make up the required value.

27. No vendor shall sell any stamp the use of which has been ordered by competent authority to be discontinued.

RULES FOR THE SALE OF STAMPS IN THE CENTRAL PROVINCES AND BERAR.

The Central Provinces Government Notification No. 85 of 3rd Commencement. March, 1910.

Central Provinces Government Gazette, Part I, page 140.

Definition. 1. These rules shall come into force at once.

2. The sale of any description of Stamps (other than unified anna and half-anna stamps) by any person who is not duly authorised in the manner hereinafter provided, is prohibited.

Sale of stamps.

NOTE.—This prohibition does not apply to the case of a legal practitioner or a banker, who buys a stock of stamps for use in his own business, and affixes them, when occasion requires, to the document he has to draw up in the course of that business, the cost of the stamps being recovered from his client or customer with the rest of his charges.

Classes of vendors. 3. There shall be two classes of vendors, namely :—

(a) *Ex-officio* vendors.

(b) Licensed vendors.

(v) The following persons shall be deemed to be *ex-officio* vendors :—

(1) The Treasurer or Treasurer's Agent at a Local Depot.

(2) The Tahsildar or potdar at a Branch Depot.

(3) Inspectors of Stamps Licenses and any other Government official who may be appointed by the Collector in this behalf.

(b) The Collector may grant a license for vend of stamps to any of the following persons :—

(1) Sub-Postmaster or Branch Postmasters.

(2) Inspectors of Stamp Licenses.

(3) Village Schoolmasters.

(4) Any other person or class of persons deemed by the Collector to be fit and proper persons for the sale of such stamps.

Provided that in the case of the appointment of Sub-Postmasters, Branch Postmasters and Schoolmasters the Sanction to appointment required in certain cases, previous consent of the Postmaster-General or the Director of Public Instruction, as the case may be, shall be obtained. Such consent may be either general or special.

4. The license shall be in Form A annexed to these rules. In the case of persons specified in subhead (4) of Rule 3 (b) it shall be granted to the person by name. In other cases the designation of the official only shall be entered therein.

5. A license may be revoked at any time by the Local Government or by the authority who granted it.

6. (1) The *ex-officio* vendors other than Inspectors of Stamp Licenses shall supply stamps to the public and to licensed vendors, and shall allow discount to the latter at the rates and under the conditions hereinafter prescribed.

(2) The *ex-officio* vendors other than Inspectors of Stamp Licenses shall sell direct to the public only such stamps as are above the denomination of Rs. 20 (twenty).

(3) Inspectors of Stamp Licenses appointed as *ex-officio* stamp vendors shall not sell stamps to the public direct; but shall supply them to such official and non-official vendors as reside at a distance from the district treasury and are in need of them, allowing discount at the rate and under the conditions referred to above.

7. (1) Licensed vendors shall sell to the public such stamps only and at such places only as are indicated in their licenses. They shall be restricted to the sale of the stamps of values not exceeding Rs. 20 each.

(2) Inspectors of Stamp Licenses who are granted licenses shall sell stamps to the public only when on tour and at such places only where there are no licensed vendors.

8. (1) Licensed vendors shall obtain stamps from *ex-officio* vendors at local and branch depots, either on payment of ready money (less the commission hereinafter prescribed) or without pre-payment as an advance in accordance with the following rule. A licensed vendor shall obtain stamps only at the depots situated in the district for which his license is granted.

(2) The Deputy Commissioner and Treasury Officer must see that licensed vendors do not unnecessarily harass the Treasury staff by constant indents.

9. (1) Licensed vendors noted below may be granted by the Collector an advance of non-judicial stamps not exceeding Rs. 20 each in value without pre-payment to the extent indicated against each :—

	Maximum value.
	Rs. *
(a) To Sub-Postmaster or Branch Postmaster ...	75
(b) To Village Schoolmasters who are not Sub-Postmasters or Branch Postmasters and to other officials drawing a salary not less than Rs. 20	20
(c) To Non-official vendors ...	50
(d) To Inspectors of Stamp Licenses ..	100
as <i>ex-officio</i> vendors	75
as licensed vendors	25

(2) The license vendors shall, on receiving such advance, give a receipt for the money value of the stamps advanced, which receipts shall be renewed half-yearly in the manner provided for permanent advances by the Accounts Department. When they cease to be licensed, they shall return such stamps as are in their possession and shall return in cash the difference between the stamps so returned and the value entered in the receipt and the receipt shall then be returned.

(3) All stamps subsequently supplied to a licensed vendor must be paid for by him in cash.

NOTE.—The cost of remitting cash to the treasury for the purchase of stamps, and of postage and insurance of stamp parcels issued to the licensed vendors in return for cash, is borne by the stamp Department in the case of (a) Sub-Postmasters and Branch Postmasters (b) Village Schoolmasters and other officials.

10. Security for an advance should be taken from non-official vendors in forms Nos. 32 and 33 of part V as the case may be. Sub-Postmasters, Branch Post masters, Inspectors of Stamp Licenses, and Village Schoolmasters should not be required to give security.

The calling of advance. 11. Advances may at any time be called in by the Collector.

12. (1) Every licensed vendor who purchases from Government by payment of ready money will be allowed discount on the supply of stamps purchased by him, provided that no discount shall be payable when the total value of such purchases falls below Rs. 5.

(a) Inspectors of Stamp Licenses who are granted licenses shall receive the same discount as is paid to vendor resident at places where there are no *ex-officio* vendors.

(b) The rates of discount per cent. are as follows :—

	RATES OF DISCOUNT PER CENT.		
	In the towns of Nagpur and Jabhalpore.	At other place where stamps are sold by Government.	At all other places.
	Rs. A. P.	Rs. A. P.	Rs. A.
NON-JUDICIAL STAMPS.			
Hundi stamps			
Impressed stamp paper	3 2 0	1 11 0	6 4

NOTE.—*Ex-officio* vendors shall receive no discount on sales effected by them.

13. Upon application being made for an impressed sheet of a particular value, a sheet of that value shall, if in stock, be furnished to the applicant.

14. Should no sheet of the value required be in stock, the vendor shall supply the applicant with the smallest number of sheets which he can furnish so as to make up the required value. In the case of a licensed vendor, the applicant shall not be supplied with sheets to an aggregate value exceeding the limit authorized under Rule 7 (1). If the sheet required exceeds this value, the licensed vendor shall refer the applicant to an *ex-officio* vendor.

15. Every stamp vendor shall endorse on the back of each impressed sheet (other than a hundi) sold by him to the public the serial number, the date of the sale, the value of the stamp in full in words, and the name, father's name, caste, the residence of the actual purchaser, and if purchased on behalf of a third person, the name and residence of that person, and shall affix his signature to the endorsement. At the same time he shall make corresponding entries in a register to be kept by him in Form B hereinafter prescribed.

Register of sales.

16. Every vendor shall keep a register (see Form B) of impressed sheets sold to the public.

17. If the purchaser is literate he should be invited to sign the endorsement on the stamp and the entry in the register; and if illiterate the imprint of his left thumb impression should be taken below the endorsement on the stamp as well as against the entry in the register.

18. Each page of the register shall be numbered and sealed with the seal of the Deputy Commissioner's office. The name of the vendor, the date on which the register is brought into use, and the number of pages it contains shall be entered on the inside of the cover. On completion, it shall be deposited in the Collector's office. The use by a licensed vendor of a register not so distinguished is forbidden.

19. Every licensed vendor shall also maintain a register of his daily transaction in Form C.

False endorsement or enfacement prohibited.

20. No vendor shall knowingly make a false endorsement or enfacement on a stamp sold or false entry in his register of sales.

21. No vendor shall demand or accept for any stamp more than the actual value denoted thereon, and every vendor shall without delay deliver any stamp which he has in his possession for sale on demand by any person tendering the value in any currency which would be accepted on behalf of Government by the Collector.

Discontinued stamps not to be sold.

22. No vendor shall sell any stamp the use of which has been ordered by competent authority to be discontinued.

23. Every vendor shall allow any Inspector of Stamp Licenses or any Revenue Officer not below the rank of Naib-Tahsildar, or any official duly authorized in that behalf by the Collector or by the Local Government, at any time to inspect Accounts &c., to be open to inspection.

pect his register of sales and to examine his license and the store of stamps in his possession.

24. Every licensed vendor shall at any time on the demand of the Collector or on revocation or on relinquishment of his license deliver up all stamps, or any class of stamps, remaining in his possession, together with the registers, copy of the Stamp Act and rules which he was supplied with free of cost.

Stamps to be delivered on demand by Collector or on revocation to license, &c.

25. Every licensed vendor shall at all times keep affixed in a conspicuous position outside his place of vend a placard bearing his name and the words "Licensed Vendor of Stamps" in the Vernacular, and also, should the Collector so require, in English.

Signboard. &c.

26. He shall keep at his place of vend his license and copies in English and Vernacular of the Act of the Legislature referring to the stamps sold by him and its schedules, together with these rules in English and Vernacular which shall be supplied to him free of charge. He shall permit any intending purchaser to inspect the Act, Schedules and Rules.

27. A licensed vendor may be allowed to exchange unsold stamps which are fit for use for other stamps of the same value.

Unsold stamps may be exchanged.

28. Every licensed vendor shall keep for sale to the public a supply of half-anna and one-anna unified stamps sufficient for the probable demand of at least one week.

Supply of unified anna and half-anna stamps to be kept.

29. A register of licenses issued shall be kept up in the Collector's office, and shall be revised annually in April when all lapsed licenses shall be struck out and new licenses entered. It shall contain the following headings:—

List of licensed vendors.

(a) Date of license.

(b) Name of licensee.

(c) Place of vend.

(d) Amount of security, if any, taken.

(e) Description of stamps to be sold under the license.

(f) Remarks (this column will show any changes that may take place during the year).

RULES FOR THE SALE OF STAMPS MADRAS.

Power to frame rules under s. 74 was delegated to the Board of Revenue by Madras Government Notification 558 of the 6th October, 1914. But the following rules framed under the Act of 1879—Fort St. George Gazette Notification No. 84 of 13th March, 1888, Part I, page 200—and subsequently amended by the Board of Revenue are still in force.

1. The Office of the Superintendent of Stamps shall be a local depot for the sale of stamps exceeding Rs. 50 in value.

2. When the stock of stamps in any local depot falls below the prescribed amount, it shall be the duty of the Superintendent of Stamps to bring the same to the notice of the Board of Revenue.

3. Such of the packets received in a local depot from the Superintendent of Stamps as bear English seals and are marked as containing a certain number of stamps may be left with seals unbroken to be counted as they are required on being given out from double lock.

4. The stock of stamps to be left with the treasurer shall be limited to a week's supply, except when the value of stamps, stock notes and cash left with him is below the security taken, when the value of stamps in his possession may be increased by the difference.

5. The register referred to in the Government of India rule 18 shall be in the English language.

6. The supply to be kept in a branch depot shall be equal to the probable demand for one month. As soon as the number of stamps in the branch depot falls below the number issued in the preceding six weeks, the officer in charge of the branch depot shall submit an indent for a supply equal to the probable consumption of one month, so that he may always have a month's reserve besides the number required for sale during the month. The Board of Revenue may, however, direct that the supply to be kept in any particular branch depot or depots shall be equal to the probable demand for three months. In such cases, the officer in charge of the branch depot shall, as soon as the number of stamps in the depot falls below the number issued during the preceding four months, submit an indent for a supply equal to the probable consumption of three months, so that he may always have three months' stock in reserve, besides the number required for sale during the next three months.

7. In every branch depot stamps sufficient for a week's supply should be left in charge of the taluk sarishtadar, who is the *ex-officio* vendor, and all the remaining stamps should be kept under joint lock and key of the tahsildar and taluk sarishtadar, both the keys being under charge of the latter when the former is absent from the headquarters.

8. Such officers of Government as the Board of Revenue of Government may appoint shall be *ex-officio* vendors. Such persons as may be licensed by the Collector or other officer empowered by the Board of Revenue or Government to grant licenses shall be licensed vendors.

9. *Ex-officio* vendors shall sell such stamps as they may be directed by the Board of Revenue or Government to sell. Licensed vendors shall sell such stamps as are indicated in their licenses.

10. Every license shall be revocable at any time by the authority who granted it. Every license shall specify the name of the licensee, the description of stamps, that are to be sold under the license, the place of vend, and such other matters as may be necessary, and shall be signed by the authority granting it.

11. Subject to rule 13, every licensed vendor who purchases from value of Rs. 5 and under, and to the aggregate amount of Rs. 5 and upwards, shall receive the same at a rate of discount not exceeding $6\frac{1}{4}$ per cent.

12. Subject to rule 13, every licensed vendor who purchases from Government, by payment of ready money, stamps of the individual value of above Rs. 5 and not exceeding Rs. 50, shall receive the same at such discount not exceeding the following rates as may be prescribed by the Board of Revenue or Government :—

	Per Cent.
Vendors licensed at places where stamps are sold	
by Government	3
Vendors licensed at other places	5

13. No discount shall be given on account of the purchase any stamp exceeding Rs. 50 in value, nor on any stamps applied on material furnished by the purchaser himself, nor if these be purchased at one time less than the quantity prescribed by these rules in respect of any class or value of stamps.

14. The Board of Revenue or Government may authorize licensed vendors to be supplied with stamps without requiring payment in ready money. Such licensed vendors may receive commission on these stamps sold by them at a rate to be prescribed by the Board of Revenue or Government not exceeding 2 per cent. In this case sufficient security shall be taken from the licensed vendors for the payment of any sum due by them to Government.

15. Every licensed vendor shall at all times have fixed up in a conspicuous station outside the place of vend a signboard bearing the name of the vendor, with the words "Licensed vendor of stamps" in English and the Vernacular language of the district. He shall also have in the place of vend the Acts of the Legislature and their schedules referring to the stamps sold by him together with these rules in English and the said Vernacular, placed so that they can readily be seen and read by purchasers.

16. Every *ex-officio* vendor selling stamps to any person not a licensed vendor, and every licensed vendor, shall write on the back of every stamp paper which he sells a serial number as determined by order of the Government, the date of sale, the name and residence of the purchaser, and if the stamp is purchased for the use of any person other than the person who tenders the money for it, the name and residence of that other person also, and the value of the stamp in full in words, and his own ordinary signature; at the same time he shall make corresponding entries in a register to be kept by him in such form as the Government may prescribe. Any such vendor who shall knowingly make a false endorsement on the stamp sold, or a false entry in his register, renders himself liable to prosecution under the Indian Penal Code.

17. Every *ex-officio* or licensed vendor shall, without delay, deliver any stamp which he has in his possession for sale, on demand by any person tendering the value in any currency which would be accepted on behalf of Government by the Collector of the district.

18. No *ex-officio* or licensed vendor shall sell any stamps, the use of which has been ordered by competent authority to be discontinued.

19. Every *ex-officio* or licensed vendor shall keep and render such accounts as may be prescribed by the Board of Revenue or Government, and shall allow the Collector of the district or any officer duly authorized by such Collector, by the Board of Revenue or by the Government, at any time to inspect such accounts, and the register which he is required to keep under rule 16, and to examine the store of stamps in his possession.

20. Every *ex-officio* or licensed vendor shall, at any time on the demand of the Collector or other officer duly authorized by the Board of Revenue or Government, deliver up all stamps remaining in his possession, and if such stamps have been paid for, shall receive back the value thereof, less any discount which may have been allowed.

21. When application for an impressed sheet of a particular value is made to a Treasury officer or to a stamp vendor, the Treasury officer or stamp vendor shall, if possible, issue a single sheet of that particular value. If a single sheet is not available he shall issue the fewest possible sheets that will aggregate the required value.

22. When, however, the value of the stamp paper applied for is higher than the highest value of stamp which a vendor is authorized to sell, such vendor shall not attempt to supply such stamps by the sale of a number of the stamped sheets he is authorized to sell.

23. The stock of stamps in the central depot shall be verified annually by an officer of the rank of Assistant or Deputy Collector, unconnected with the stamp department and deputed by the Government for the purpose. The verification shall take place in the manner and form prescribed by the Comptroller-General, to whom the result will be reported.

RULES FOR THE SALE OF STAMPS, PUNJAB.

Punjab Government Notification No. 1500 of 5th June, 1900.

Punjab Gazette, Part I, page 115.

RULES—INTERPRETATION.

1. In these rules unless a different intention appears from the subject or context :—

- (a) the word "STAMP" means a stamp intended to be used under the Indian Stamp Act, 1899, and includes the plural, and applies to adhesive stamps and stamps impressed on sheets of paper. The word does not include any stamp intended to be used under the Court Fees Act, 1870, and is limited to non-judicial stamps ;
- (b) the expression "IMPRESSED STAMP" means a stamp as defined in Section 2 (13) of the Stamp Act, 1899 and the expression "ADHESIVE LABEL" has the meaning attached to it in rule 14 of Government of India Notification No. 786 S. R., dated 17th February 1899 ;
- (c) the expression "LOCAL DEPOT" includes every treasury at the head-quarters of any district in the Punjab and any place, where there is no treasury for the custody and sale of stamps, which the Lieutenant-Governor may declare to be a "Local Depot" ;
- (d) the expression "BRANCH DEPOT" includes every subordinate treasury at the head-quarters of a TAHSIL or other sub-division of a district ;
- (e) the expression "EX-OFFICIO VENDOR" means the treasurer for the time being of every treasury at the head-quarters of a district in the Punjab or his agent, the sub-treasurer of every sub-treasury at the headquarters of a TAHSIL or sub-division of a district, and also includes every person appointed to discharge the function of a treasurer at any local depot established at a place where there is no treasury ;
- (f) the expression "LICENSED VENDOR" means every person who for the time being holds a license granted under these rules, to sell stamps, but does not include an "EX-OFFICIO VENDOR," as such, though an EX-OFFICIO VENDOR may, if duly licensed, be also a LICENSED VENDOR ;
- (g) the term "SPECIAL LICENSE" means a license to sell stamps granted under these rules to a Government servant to sell stamps on special terms as to

remuneration; and a specially licensed vendor is, a person holding such license;

- (h) the term "**VENDOR**" includes both **EX-OFFICIO** and **LICENSED VENDORS** and **SPECIALLY LICENSED VENDORS**.

II.—These rules are subject to the rules made by the Governor-General in Council and published in Notification No. 786 S. R., dated the 17th February, 1899.

SUPPLY OF STAMPS.

III.—Stamps will be supplied to local Depots and branch depots under the rules made by the Governor-General in Council and published with Government of India Resolution No. 1439 S. R., dated the 27th March 1895, as amended by Resolution No. 2655 S. R., dated the 13th June 1899, republished by Punjab Government Notification No. 1396, dated the 20th July 1899.

IV.—(i) (With reference to rule 7 of the rules quoted in rule III of these rules), the supply of stamps of each denomination to be maintained at the Lahore local depot shall be equal to the probable consumption of not less than twelve nor more than twenty-four months. The supply of stamps of each denomination to be maintained at the local depots at Delhi, Mooltan and Rawalpindi, respectively, shall be based on the probable consumption of not less than nine nor more than eighteen months. In the case of every other local depot the supply to be maintained shall be based on the probable consumption of not less than three nor more than twelve months.

(ii) (With reference to rule 8 of the rules), as soon as the number of stamps of any denomination in the local depot approaches the minimum as set forth in the preceding rule, an indent for a quantity which, with the balance in hand, shall make up the maximum as set forth in the preceding rule, shall be prepared and forwarded to the Superintendent of Stamps, Calcutta, through the office of the Superintendent of Stamps, Punjab.

(iii) (With reference to rule 30 of the rules quoted in rule III of these rules), the supply of stamps of each denomination to be kept in a branch depot shall be equal to the probable consumption of not less than one nor more than two months.

(iv) (With reference to rule 11 of the rules quoted in rule III of these rules), as soon as possible after the arrival at a local depot of a supply of stamps, the officer in charge of such depot shall have every box or package opened in his presence and the contents of each such box or package shall forthwith be counted by himself, or, in his presence, by some person acting under his control. The officer in charge of the local depot shall compare the number, description and value of the stamps received, with the entries in the invoice accompanying the remittance. The inside wrappers of packets of stamps which bear the initials of the officers through whose hands the packets passed before issue from England should

invariably be preserved until the whole contents of the packets have been examined and found correct. If the stamps received be found to correspond with those shown in such invoice, he shall date and sign such invoice, and return it to the officer from whom the supply of stamps has been received. If any discrepancy be found, he shall forthwith inform such officer, and also the Superintendent of Stamps, Punjab, of the nature and extent of the discrepancy.

If the supply of stamps received is large, the officer in charge of the depot may, instead of opening and counting the contents of every sealed packet marked as containing a certain number of stamps, open and count the contents of ten per cent. of such sealed packages. The remainder, if the contents of those packages which have been opened are found correct, may be deposited with seals unbroken under double-locks, and their contents may be verified when they require to be opened for the purpose of issue of stamps from the double-locks.

(v) Stamps supplied to a local depot and found, upon receipt, to be unfit for issue, and stamps which, at any time after receipt, in any manner become unfit for issue, should be returned to the Superintendent of Stamps, Calcutta, as soon as their unfitness for issue is discovered, and a report made of the circumstances under which the stamps are believed to have been rendered unfit for issue. At the same time a copy of such report should be forwarded to the Superintendent of Stamps, Punjab.

(vi) Clauses (iv) and (v) of this rule shall apply, *mutatis mutandis*, to branch depot. Indents for the supply of stamps to branch depots shall be prepared and sent to local depots not less often than once every month.

(vii) With reference to rule 16 of the rules quoted in rule III of these rules, the accounts to be kept by *ex-officio* vendors shall be kept either entirely in the English language or in the Urdu language, English figures being invariably used to express numerals.

LICENSES FOR VENDOR OF STAMPS.

V.—(i) Subject to the provisions of these rules, the Collector, or other officer empowered by the Local Government in this behalf, may grant to any person a license for the sale of stamps of any value or description named in the license, at any place, or in any area, within the limits of his district, provided that no person employed in any department of the public service shall be granted a license under these rules without the previous consent of the head of such Department.

(ii) The Collector may in his discretion grant a license to sell stamps to any *ex-officio* vendor, and the *ex-officio* vendor, so licensed, shall be also a licensed vendor within the meaning of these rules, and shall be subject to all the provisions thereof as regards the sale of stamps and his duties and remunerations as such licensed vendor.

(iii) The Collector may in his discretion and subject to the proviso in clause (i) of this rule grant to any sub-postmaster or other Government servant a special license to sell, at a place other than the headquarters of a district or TAHSIL—

(a) impressed stamps other than impressed labels and Hundi stamps ;

(b) adhesive stamps of the value of one anna each, commonly called "receipt stamps" ;

subject to the following regulations :—

(1) Any Government servant specially licensed under this rule may, at the time of being licensed, receive without payment of ready money, an advance of stamps of the class that he is licensed under this rule to sell, of an aggregate value not exceeding fifty rupees ; the specially licensed vendor receiving such advance shall give a receipt for the money value thereof, which receipt shall be renewed from year to year in the manner prescribed for permanent advances on account of contingent expenditure ; when the Government servant ceases to be licensed or desire to discontinue the advance, he shall refund the value entered in the receipt, either in money or in stamps of the class which he is licensed to sell, and the receipt shall then be returned to him.

(2) All postage charges for the remittance by such vendors or specially licensed vendors or for the remittance by such vendors of the value of the stamps supplied to them shall be borne by the Stamp Department.

VI.—(i) Every license granted under these rules shall specify the person licensed, the kind and the value of the stamps he is licensed to sell, and the place at, or area within which, he is licensed to sell, and shall further contain the particulars and conditions, and be in the form attached to these rules and marked Form A, or in such other form as the Financial Commissioner may from time to time prescribe.

(ii) Every special license shall contain the same particulars and be in the same form as are stated in clause (i) of this rule but the Collector may, if he sees fit, grant the license in the name of a particular office at a particular place instead of in the name of a particular person.

VII.—The Collector shall cause a register of licenses and special licenses granted under these rules to be maintained for the district. The register shall contain the following particulars :—

(a) Date of granting the license.

(b) Serial number for the year of the license.

(c) Name and description and residence of person licensed ; or in the case a license granted to a public servant, the official designation of the office in virtue of which the license may be used.

- (d) Place or area for which the license is granted.
- (e) Description of stamps (kind and value) covered by the license.
- (f) Period for which the license is granted.
- (g) Amount of security (if any) taken.
- (h) Acknowledgment of licensee.
- (i) Remarks relating to revocation, renewal, surrender, expiry, &c., of license.
- (j) Date of destruction of license.

VIII.—(i) Any license or special license granted under these rules may be revoked at any time by the Collector of the district in which it was granted, or by any revenue authority to whom such Collector is administratively subordinate.

(ii) When any license or special license is revoked, or, when the term for which any license is granted expires, it shall be the duty of the person to whom it was granted or his representative to surrender it to the Collector. The Collector will receive and (by encasement) cancel every such license. Cancelled license may be destroyed when no longer likely to be required for any purpose.

• SALE OF STAMPS BY VENDORS.

• Duties of the Vendors.

IX.—No person other than a vendor as defined in those rules shall sell stamps, other than one anna adhesive stamps, unless specially authorised thereto by Notification of the Local Government.

X.—(i) Every vendor shall sell stamps in accordance with these rules for the value expressed upon them, and for no more.

(ii) Every vendor shall accept payment for any stamp sold by him in any currency which would be accepted on behalf of Government at a district treasury.

(iii) No vendor shall sell stamps of any kind the use of which has been discontinued or prohibited by competent authority but any stamp of any kind the use of which may have been so discontinued may be dealt with according to the proviso to Section 54, Chapter V of Act II of 1899.

XI.—No *ex-officio* vendor shall, as such, sell stamps otherwise than in accordance with the following directions :—

- (a) to a licensed or specially licensed vendor stamps of the kinds and values specified in the licensed vendor's license;
- (b) to any person impressed stamps exceeding Rs 50, each in value;

Provided that no *ex-officio* vendor shall, as such, sell any stamp except upon immediate payment for the same.

XII.—(i) Every licensed or specially licensed vendor may subject to the conditions of his license and the requirements of these rules purchase from an *ex-officio* vendor and sell to any person stamps of any kind or value covered by his license.

(ii) Subject to the provisions of Chapter V of the Stamp Act, 1899, no licensed or specially licensed vendor shall obtain (by purchase, exchange or otherwise) any stamps from any person other than an *ex-officio* vendor.

XIII.—(i) If the duty on any document has to be denoted in the form of impressed sheets, it shall be so denoted by the smallest number of impressed sheets available by which the duty required can be made up.

(ii) If the amount of the stamp duty to be denoted is such that it can be denoted by a single impressed sheet, and such impressed sheet is available, it shall be supplied.

(iii) Whenever under these rules and directions more than 3 single impressed sheets is supplied to denote the value of the stamp duty required, the vendor shall write upon such impressed sheet supplied a certificate stating that he is unable to supply a single impressed sheet of the required value and that the number of impressed sheets supplied is the smallest he can furnish to make up that value.

(iv) A copy of every certificate endorsed under the preceding clause shall be entered in the vendor's vend register, and shall be dated and signed by the vendor making it.

XIV.—Every vendor shall truly and correctly endorse in the English or Urdu Character on every impressed sheet sold by him to the public the following particulars :—

- (a) the serial number of the year of the entry of the sale of such impressed sheet in the vend register ;
- (b) the date of the sale of the stamp ;
- (c) the name, (if a native) father's name and residence of the purchaser ; if the purchaser is purchasing on behalf of another person, then also the name, (if a native) father's name and residence of the person for whom the impressed sheet is purchased ; and
- (d) the value of the impressed sheet sold (to be entered in words) ; and shall sign the endorsement.

XV.—No vendor shall knowingly endorse on any impressed sheet sold the name of any person other than the actual purchaser, or the person on whose behalf the stamp is being purchased ; or deliver any stamp sold to any person other than the person whose name is so endorsed thereon.

XVI.—Every vendor shall truly and correctly enter in his vend register the particulars of every impressed sheet sold by him to the public at the time when the sale takes place. He shall also invite the purchaser to attest the entry by his signature or thumb impression, or both, and in the event of the purchaser refusing so to attest the entry of sale, the vendor shall record the fact of such refusal and if the purchaser wishes, the reason for the refusal.

XVII.—Every licensed vendor shall exhibit conspicuously at his place of vend a sign-board, bearing his name and the words "Licensed vendor of Non-Judicial Stamps." He shall also have at the same place, for reference on application by intending purchasers, a copy of these rules and, if the Collector by general or special order so directs, a copy of the Indian Stamp Act.

REMUNERATION OF VENDORS.

XVIII.—(i) No ex-officio vendor shall, as such, be entitled to any discount or commission on the value of any stamps supplied to him for custody and sale, upon the sale thereof.

(ii) Licensed and specially licensed vendors shall be entitled to discount on the value of stamps purchased by them from an ex-officio vendor at the rates specified in the following Schedule. Provided that discount shall not be allowed on the value of any stamp of a kind not specified in the said Schedule, nor on the value of any single stamp of denomination higher than Rs. 50, nor when the total value of the stamps purchased at one time is less than Rs. 5 :—

RATES OF DISCOUNT.

(a) Vendors holding ordinary licenses to sell stamps :—

Description of stamps.		RATES OF DISCOUNT.	
		At places where stamps are sold by Government.	At other places
		Per cent.	Per cent.
		Rs. A. P.	Rs. A. P.
<i>Adhesive.</i>			
One anna revenue labels	... ..	6 4 0	6 4 0
Other stamps not exceeding in value eight annas each	<div> <div>Foreign Bill, Share Transfer and Notarial stamp.</div> <div>}</div> </div>	4 11 0	6 4 0
Exceeding eight annas, but not exceeding Rs. 5 each		2 9 8	3 2 0
Exceeding Rs. 5 but not exceeding Rs. 50 each		1 9 0	1 9 0
<i>Others.</i>			
Hundi stamps	<div> <div>}</div> </div>	4 11 0	6 4 0
Impressed stamp papers			

The Local Government may at its discretion direct that the rates of Rs. 4-11-0 and Rs. 2-9-8 per cent., prescribed in the scale for places where stamps are sold by Government shall be reduced to Rs. 3-2-0 and Rs. 1-9-0 per cent., respectively, in the case of any town with a population of 50,000 inhabitants or upwards.

(b) Government servants holding special licenses to sell stamps :—

On all stamps which they are licensed to sell under these rules.....2 per cent.

VEND REGISTERS.

XIX.—(i) Every licensed and specially licensed vendor shall maintain the VEND REGISTER hereinafter prescribed, and such other registers, and shall keep such accounts, in such form as may be from time to time prescribed by the Superintendent of Stamps, Punjab.

(ii) Every licensed and specially licensed vendor shall maintain a VEND REGISTER in the form annexed to these rules, and shall regularly and correctly enter therein the following particulars :—

- (a) the date of sale of any impressed sheet sold ;
- (b) the serial number of the entry of every such sale ; a new series of numbers being commenced on the first day of each succeeding year ;
- (c) the value (in words) of each stamp sold, and the total value of stamps sold in each transaction ;
- (d) the description of stamps sold ;
- (e) the full name (if a native, *father's name*) surname if any, and residence of the purchaser ;
- (f) the purpose for which the purchaser states that the stamp is purchased ;
- (g) copy of certificate (if any) required by rule XIII (iv).
- (h) Signature or thumb impression of purchaser, if the purchaser consent to sign the entry, or make the impression, and if he does not consent, the reasons for his not consenting, in case the purchaser states his reasons.

(iii) Blank Vend Registers in the prescribed form shall be supplied through the Collector's office free of charge to vendors on application.

(iv) Before issuing any blank Vend Register to a vendor, the Collector shall enter or cause to be entered at the beginning thereof the following particulars :—

- (a) the full name and residence of the vendor to whom the register is being issued ;
 - (b) the date on which the register is issued ;
 - (c) the number of pages the register contains. The Collector shall also cause the pages to be numbered consecutively in ink.
- (v) When any register becomes filled up the vendor shall deliver the same to the Collector or other officer deputed to receive the same.

INSPECTION AND CONTROL.

XX.—Every vendor shall upon the demand of the Collector, whenever required to do so, deliver up all stamps in his custody or possession as such vendor, and if such stamps have been paid for by such vendor, the value thereof less any discount which may have been allowed at the time of the purchase thereof to such vendor shall be refunded to him.

XXI.—(i) The registers and accounts maintained by, and the stock of stamps in store with, any specially licensed vendor shall be subject to inspection at any time by the Superintendent of Stamps, Punjab, every Revenue Officer of rank not below that of Collector, and every officer whose duty it is to inspect departmentally the office of the Government servant holding the special license.

(ii) The registers and accounts maintained by, and the stock of stamps in store with, any vendor other than one holding a special license, shall be subject to inspection at any time by the Superintendent of Stamps, Punjab, every Revenue Officer of rank not below that of Collector, and every Revenue Officer below Collector's rank who has been specially authorised by the said Superintendent, Revenue Officer or Collector in that behalf.

(iii) Upon being so required by any officer authorised under clause (ii) of this rule, every vendor shall produce for the purpose of inspection all stamps in his custody or possession and all registers and accounts kept by him as such vendor.

FORM A.

(Referred to in Rule VI).

License is hereby granted to (*name, father's name and residence of licensee*) to sell at (*place of vend*) stamps of the description mentioned in the margin for period of (*here state duration of license*) commencing from (*date*) subject to the rules made on that behalf, under section 74 of the Indian Stamp Act, II of 1899. The infringement of any of these rules shall render the holder liable to cancellation of his license and the penalties prescribed in Section 69 of the said Act, namely, imprisonment for a term which may extend to six months or fine not exceeding five hundred rupees, or both.

This license may be revoked at any time by the Collector of the district in which it is granted or by any Revenue Officer to whom such Collector is administratively subordinate. On this license being revoked, or when the term for which it is granted expires the person hereby licensed shall surrender the license at once to the Collector.

Date of issue of license.

Signature of Deputy Commissioner
or other issuing authority.

RULES FOR THE SALE OF STAMPS. . THE UNITED PROVINCES.

The United Provinces Government Gazette of the
29th June 1907.

United Provinces Gazette, Part I, page 505.

- | | |
|-----------------|---|
| Commencement. | 1. These rules shall come into force at once. |
| Definition. | 2. The word "Collector" shall be deemed to have the meaning attached to it by the Indian Stamp Act, 1899. |
| Sale of stamps. | 3. The sale of any description of stamps (other than half-anna and one anna unified stamps), by any person who is not duly authorised in the manner hereinafter provided is prohibited. |

NOTE :—This prohibition does not apply to the case of a legal practitioner or a banker, who buys a stock of stamps for use in his own business, and affixes them, when occasion requires, to the documents he has to draw up in the course of that business, the cost of the stamps being recovered from his client or customer with the rest of his charges.

- | | |
|--------------------|---|
| Classes of vendors | 4. There shall be two classes of vendors, namely (a) ex-officio vendors and (b) licensed vendors. |
|--------------------|---|

(a) The following persons shall be deemed to be ex-officio vendors :—

- (1) the treasurer of each district, with his salaried assistant ;

(2) the tahsildar of each tahsil ;

(3) any salaried vendor who may be appointed by the Government.

(b) The Collector may grant a license for vend to any of the following persons, namely : —

(1) Lambardars of villages.

(2) Bakhshis in towns under the provisions of the Chaukidari Act XX of 1856.

(3) Poundkeepers.

(4) Kurkamins.

(5) Postmasters at places other than head-quarters of a tahsil.

(6) Village Schoolmasters.

(7) Non-official sub-registrars.

(8) Any other person deemed by the Collector to be fit and proper person for the sale of such stamps :

Sanction to appointments required in certain cases. Provided that in the case of the appointment of post-masters, and sub-registrars the previous approval of the Postmasters-General, the Inspector of Schools, and the Registrar of the district, respectively, shall be obtained.

5. * * * * *

6. The license shall be in the form annexed to these rules. In the case of the persons specified in sub-head (8) of rule 4 (b) it shall be granted to the person by name ; in other cases the designation of the official only shall be entered therein.

Form of license.

Revocation of license.

7. A license may be revoked at any time by the Local Government or by the authority who granted it.

8. Ex-officio vendors shall supply stamps to the public and to licensed vendors ; and shall allow discount to the latter at the rates and under the conditions hereinafter prescribed for the purchases made from the Government.

Duties of *ex-officio* vendors.

9. Licensed vendors shall sell to the public such stamps as are indicated in their licenses. They shall ordinarily be restricted to the sale of the stamps of values not exceeding Rs. 25 ; but the Collector may for special reasons authorise sale of stamps not exceeding Rs. 50 each in value.

10. Licensed vendors shall obtain stamps from ex-officio vendor at local and branch Depots on payment of ready money (less the commission herein after prescribed).

Method of supply of stamps to licensed vendors.

11. * * * * *

12. (1) Every licensed vendor who purchases stamps from Government by payment of ready money shall receive the same at a discount not exceeding the following rates :—

SCALE OF DISCOUNT
At places where stamps are sold by Government.

Description of stamp.

In towns of
50,000 or more inha-
bitants, per cent.
Else— where. At other
places. per cent.

Adhesive non-judicial stamps—

Stamps not exceeding in value 8 annas each	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
...	3	2	0	4	11	0	6	4	0
Exceeding 8 annas but not exceeding Rs. 5 each	1	9	0	2	9	8	3	2	0
Exceeding Rs. 5 but not exceeding Rs. 50	1	9	0	1	9	0	1	9	0

Impressed sheet (non-judicial)

Hundi stamps	...	...	...	3	2	0	4	11	0	6	4	0
Impressed stamp paper	...	...	...	3	2	0	4	11	0	6	4	0

Provided that—

- (a) no discount shall be given on account of the purchase of stamps exceeding Rs. 50 each in value, nor on any stamp supplied on any material furnished by the purchaser himself;
- (b) to enable discount to be given, it is necessary that a minimum quantity of stamps of an aggregate value of not less than Rs. 5 shall be purchased at one time and that the value of the stamps purchased shall be in even rupees;
- (c) no discount shall be given on account of the purchase of half-anna and one anna unified stamps.

(2) * * * * *

Stamp of the denomination required to be supplied if possible. 13. Upon application being made for an impressed sheet of a particular value, a sheet of that exact particular value shall, if in stock, be furnished to the applicant.

14. Should no sheet of the particular value required be in stock, the officer in charge of the treasury, when the application is made at a treasury or the ex-officio or licensed vendor when the application is made to him, shall be bound to supply the smallest number of sheets which he can furnish so as to make up the required amount.

Particulars to be entered on impressed sheets.

Register of sale.

REGISTER OF DAILY SALE OF STAMPS.

[illegible]

False endorsement or
enfacement prohibited.

Overcharge strictly prohibited.

Cancelled stamps not
to be sold.

20. Every vendor
Accounts, &c. to be
open to inspection.

Stamps to be delivered on demand by the Collector, or revocation of license &c.

21. Every licensed vendor shall, at any time, on the demand of the Collector deliver up all stamps, or any class of stamps, remaining in his possession.

22. Every licensed vendor shall at all times keep affixed in a conspicuous station outside the place of vend^e a signboard bearing the name of the vendor with the words "Licensed Vendor of Stamps" in English and in the vernacular language of the district. He shall also keep in the place of vend the Act of the Legislature referring to the stamps sold by him and its schedules together with those rules in English and the vernacular placed, so that they may be readily seen and read by the purchasers.

23. A licensed vendor may be allowed to exchange unsold stamps which are fit for use for other stamps of the same value.

24. Every licensed vendor shall keep such stock of stamps, including half-anna and one anna unified stamps, as the Collector may consider sufficient to meet the demand likely to be made upon the licensed vendors for their supply.

25. (1) A register of license issued shall be kept up in the Collector's office. It shall contain the following headings:—

- (a) Date of license.
- (b) Name of licensee.
- (c) Place of vend,
- (d) Amount of security, if any, taken.
- (e) Description of stamps to be sold under the license.
- (f) Remarks (this column will show any change that may take place during the year.)

(2) The register shall be subjected to annual revision as the licenses fall in. At such period lapsed licenses should be called in and destroyed and sale registers should be inspected to ensure that they are properly kept up.

FORM OF LICENSE.

(See rule 6.)

License is hereby granted to (*name, father's name, and residence of licensee*) to sell at (*place of vend*) stamps of the description mentioned below for a period of (*here state duration of license*) commencing from (*date*), subject to the rules made on that behalf under the Indian Stamp Act, 1899. The infringement of any of these rules will render the holder liable to the penalty prescribed in Section 69 of Act II of 1899, *viz.*, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees or both.

(*Here enter the description of stamps which may be sold.*)

DISTRICT.....

Dated.....

Collector.

SUBJECT INDEX.

The numerical figures refer to pages

A

- Abetment, of an offence 231
- Accident
 - instrument not duly stamped by, 194
- Account, 161
 - adjustment of, due on bond, 250
 - memorandum although signed, 252
 - not signed—a mere memorandum, 252
 - not duly stamped, admissibility of, 164
- Acknowledgment, 247
 - admissibility of an unstamped, 164
 - adjustment of account as an, 250, 251
 - balance sheet, as an, 250, 283
 - cannot be basis of a new contract, 251
 - debt must exceed Rs. 20—247, 252
 - by or on behalf of a debtor, 253
 - by creditor in a debtor's book, 68
 - conditional, 255
 - entry in an account book as an, 249
 - foreign, 255, 256
 - hatchitta, as an,—250, 253
 - in a letter, not stamped, 251, 255
 - instrument of, as a deed of partition, 39
 - instrument of, must be left in the possession of the creditor—254
 - instrument must be intended to supply evidence of a debt 253
 - memorandum, on an, 252
 - must be signed—253
 - not an, 251
 - part payment, as an—249
 - penalty as an,—256
 - promise to pay, in an.—254, 255
 - promissory note or, 251
 - sarkhat as an, 250
 - time of stamping of an, 255
 - unstamped—249
 - what is—248, 249
- Act XI of 1879
 - bonds, debentures etc., issued under—100
- Act XIX of 1883—355
- Act XII of 1884—355
- Act XIII of 1921, 340
- Act XI of 1926, 342.
- Acted on, 160
- Addition of new terms, 113
 - of a new name—113
 - of the name of a co-arbitrator, 110
- Adhesive stamps, use of, 104
- Cancellation of 105
- Adjudication, as to proper stamp, 146
 - by Collector, 146, 147
- Administration Bond, duty on, 257
 - duty by whom payable, 142
- Admission, of instrument by trial Court in evidence and subsequent rejection by appeal Court, 180
 - challenge of, by separate suit, 184
 - effect of, by debtor, 176
 - of an altered instrument, 113, 163
 - of copies, 186
 - of improperly stamped instruments, 182, 186
 - of instruments when cannot be questioned, 177
 - of instruments on payment of penalty, 167
 - of secondary evidence when the original was not produced, 182
 - of an unstamped instrument for a collateral purpose, 161
 - of unstamped endorsement, 161
 - tentative, 179
 - when stamps are not cancelled, 179
- Admission of ownership, 79
- Admissibility of unstamped instruments, 155, 156, 163
 - of an altered bond, 113,
 - of instruments chargeable with a duty of one anna, 160
 - of instruments with stamps not cancelled, 162
 - of instruments bearing separate stamps, 162
 - of copies of an unstamped instrument, 165
 - of copy of a lost instrument, 166
 - of a renewed hundi, 175
 - of instruments with different stamps, 163
 - of instruments, when cannot be questioned, 177

- of document executed outside British India, 120
- Admitted in evidence, meaning of, 178
 - by an appeal court, 183
 - in an L. P. appeal, 183
 - when the original was never produced before the trial court, 182
- Advance for produce to be delivered, 22
- Adoption Deed, duty on 257
- Advocate, entry on the rolls of a High Court, 305
- Affidavit, duty on, 258
 - declaration in, 260
 - filed or used in any court etc., 259
 - immediate purpose of an, 269
 - joint, 259
- Agreement, duty on, 260
 - duty on, by whom payable, 142
 - calculation of duty, 270
 - to divide, 38
 - arbitration, 269
 - becomes a bond when attested, 22
 - for sale, 268
 - for sale of salt, 269
 - for sale of goods, 261, 271
 - in letters, 266
 - in a petition of compromise, 46, 263
 - bad bills, notes etc. may be, when, 263
 - hire and purchase, 263
 - in a sarkhat, 266
 - in a promissory note, 267
 - for or relating to sale of goods or merchandise—261
 - for extension of time, 267
 - trusts, future profits, 268
 - transfer of parental rights, 268
 - in a postscript to a document, 267
 - made in form of tenders to govt.—261
 - penal clause in, in case of failure, 87, 263
 - relating to deposit of title deeds, pawn or pledge, 272
 - relating to sale of Govt. security etc., 260
 - subsidiary clauses in an, 272
 - when not liable to stamp duty, 261
 - to pay a debt by another, 23
 - promise to pay a barred debt, 23 262
 - to deliver grain, 264
 - to deliver grain in exchange of goods, 264
 - to exchange, an exemption, 272
 - to lease, 45, 266
 - to pay debt with interest, 265
 - to serve, 269
 - to supply fish, 87
 - to pay pleader's fee, 267
 - to take land, 46
 - to abide by the decision of a punch 351
 - to indemnify, 268
 - recited in a petition to Court, 164
 - security for performance of a contract, 269
 - unstamped, suit on, 164
 - with surety, 268
 - under European Vagrancy Act, 261
 - Agriculturists Loans Act, 1884, 351
 - Allowance for stamps, of document not executed, 206, 207
 - Application for, when to be made—210
 - for misused stamps, 212
 - in case of printed forms, 211
 - for stamp not required for use, 206, 213
 - for spoiled stamps, 206
 - for stamps rendered unfit, 207
 - how to be made, 213
 - on renewal of debentures, 211
 - where the instrument is void, 207
 - where a stamp of improper description has been used, 212
 - Alteration, material, of instruments 8, 110, 111, 112
 - by addition of a new name, 113
 - by addition of new terms, 113
 - not material, 114
 - effect of, on instruments which are foundation of a suit, 112
 - of terms by a second instrument, 9
 - in good faith, 9
 - effect of non-payment of stamp on the altered instrument, 113
 - not material, 114, 163
 - with consent, 113
 - Altered bond, admissibility of, 113
 - Amaldastak, 47
 - Annuity, valuation in case of, 134
 - Appeal court, power of revision of, of decision by the trial court as to admission of documents by such court, 184
 - power of, to admit documents, 183
 - procedure in, in case of erroneous admission by the trial Court, 185
 - Application, for relief under s. 49 when to be made, 206
 - Appointment in execution of a power of, duty on, 275
 - as regards charitable institutions, 275
 - Appraisement or valuation, duty on 276

Apprenticeship deed, 277
 public charity, exemption, 277,
 278

Arbitration, case of instruments in-
 sufficiently stamped but admitted
 in, proceedings, 178
 reference to, 269, 270

Arbitrators, are required to see that
 documents filed before them are
 properly stamped, 143, 144, 160,
 230

addition of names of co-arbitrators,
 110

but unstamped documents if ad-
 mitted in evidence by, such ad-
 mission of instruments not to be
 questioned later on, 178

letters to, 269, 281

letter appointing one, in place of
 another, 270

letters requesting appointment of,
 269

liability of, to prosecution, 230

offence by, against stamp law, 230

subsequent variation in the names
 of the, not liable to duty, 78

Articles, of Association of a Com-
 pany, 278

not formed for profit exempted,
 278

Articles of clerkship, 279

Assignment of a debt, 31, 131

letters of, unstamped, 131, 165

of a benefit of contract, 29

of a chose in action, 78

of a mortgage, 133

valuation, 131

Attestation, 20

statement by a scribe, whether, 20

Attorney, entry of an, on the rolls of
 High Court, 305

Average price stated in an instru-
 ment, 126

Auction sale

certificate of sale, 131, 132

Award, duty payable on an, 279,
 280

duty not payable by a person wish-
 ing to set aside the, 161

as an instrument of partition, 38,
 41, 42

by an arbitrator directing parti-
 tion, 41, 42, 144

copy of an, 281

in partition suit, 281

part of an, 280

remission of duty in, 281, 303

unstamped, 281

validation of an, 281

when a party wants to set aside

an, whether chargeable with
 duty, 161

B

Bainaputra, 46

Balance sheets, 250

Bank, 11

information by a, to its customer
 that money has been received is
 not a receipt, 68.

Banker, 11,

who are not, 11

Bearer, not payable to, 21

Bengal Irrigation Act, 1876, 351

Bills drawn out of British India,
 119

Bill of exchange, defined, 12.

alteration of date on a, 112

amount must be certain, 13

conditional orders, how for a, 13, 14

dishonour of a, 312, 343

drawer and drawee in a, 13

duty on a, 282

duty on, by whom payable, 142

duty on a second, of exchange, 283

hundi, as a, 14, 283

stamp duty on a, 282

person must be certain, 13

not a, 15

must be to pay a certain sum of
 money, 13

order in a, 14

renewed, 115

payable otherwise than on demand,
 283

payable on demand, defined, 15, 16

letter of credit, when a, 318

suit on bad, stamped as an agree-
 ment, 263

includes payment of a sum out of
 a particular fund, 13

written on several pieces of paper,
 109, 283

Bill of Lading, 16

by Inland Steam Navigation Com-
 pany, 16, 17

stamp duty on, 284

what is, 16

whether contains a contract, 17

Bond, defined, 17, 18

but definition not exhaustive, 18

acknowledgment or a, 22

administration, 237

advance for produce to be delivered,
 22

agreements to deliver grain, 286

agreement is a, when 22, 23

article to be delivered may be
 grain, 21

adjustment of account due on a, 250

- and agreements to pay rent in kind, 21, 22, 286
 - and obligation, difference, 20
 - and promissory note, 22, 24
 - conditional instrument as a, 19
 - customs, 301
 - for payment of debt by another, 23
 - duty on, by whom payable, 142
 - instalment, 286
 - issued under Act XI of 1879, 100
 - interest on, not liable to duty, 126, 127, 286
 - liability for debt of another, 23
 - must create an obligation to pay, 19, 20
 - obligation must be express, 20
 - must be attested by witness, 20, 21
 - scribe not a witness, 21
 - promissory note becomes a, when attested, 20
 - not a, but a promissory note, 64
 - not to be payable to bearer, or order, 21
 - promise to pay barred debt, 23
 - renewed, 175, 176
 - stamp duty on, 285
 - stipulations as to advance for produce, in, 22
 - by surities, 23
 - what is a, 18, 19
 - what is not a, 22, 23
 - with penal clause, 286
 - Bombay Irrigation Act, 1879, 354
 - Book, entries in a, offence, 230
 - entries in an account, 249, 250
 - in the custody of a public officer to be open to inspection, 242, 243
 - Bottomry Bond, duty on, 287
 - duty by whom payable, 142
 - explained, 288
 - Bought and sold notes, 15, 328
 - with clause for reference to arbitration in, 17, 270, 328
 - British India, 1, 2, 118
 - bills, cheques and notes drawn out of, 119
 - charter party, for use out of, 293
 - composition deed for use in, but executed out of, 204
 - deeds to be effective out of, 77
 - documents executed out of, duty of court, 118
 - instruments other than bills, cheques and notes drawn out of, time of stamping, 117, 118
 - instruments executed out of, 116
 - promote to must be valid according to the law of the state, 121
 - Burmese documents execution of, 35
- C**
- Calcutta Improvement trust, duties imposed by, 295
 - Cancellation, admissibility of instruments without, of stamp, 162
 - of stamp by an illiterate person, 107
 - effect of non, 105
 - effect of non, of one of stamps, 108
 - instrument of, of a former deed, duty on, 289
 - mode of, 106
 - not proper, 107
 - of adhesive stamps, 97, 105, 106
 - objection as to non,—when can be raised 108
 - on a subsequent date, 107
 - penalty for failure of, 233
 - presumption of, on a lost hundi, 107
 - time of, 107
 - Instrument of, duty on, 289
 - resale of property after, an instrument of, 289
 - of a will, remission of duty on such instrument, 289
 - Case, meaning of, 219
 - what, may be referred, 219, 220
 - procedure in disposing of a, 222
 - statement of, by other Courts to High Court, 223
 - statement of, by the Chief Controlling Revenue Authority to High Court, 218
 - Certificate, as to proper stamp, 187, 192
 - after, the instrument becomes admissible, 197
 - after disposal of suit, 192
 - by Collector, 148, 187
 - by Collector is conclusive evidence, 191, 193
 - by Collector, in the case of improper stamps, 187
 - final, when, 192, 193, 197
 - by Court, 197
 - effect of grant of a, by Court, 197
 - validity of a, by Court—197
 - when can be granted 192, 196
 - when cannot be made, 196
 - Certificate or other document showing title of the person, 292
 - Certificate of sale, duty by whom payable, 143
 - See Sale Certificate.
 - Chargeable, defined, 24
 - explained, 24, 160
 - with reference to documents executed out of British India, 24
 - Charter party, duty on, 292, 293

- Cheque, defined, 24
 explained, 25
 or a receipt, 25
 post-dated, 25
- Chief Controlling, Revenue Authority, defined, 25
 control of, 215, 217
 does not include a conservator of forest, 26
 power of control by, when can be exercised, 217
 statement of case by, 218
 statement of case to, 215, 216
- Chief Court, power of, to call for further particulars, 221
 statement of case to, 218
 procedure in, in disposing of cases stated, 222
- Chose-in-action, assignment of, 78
- Civil Court, review by, of decision by Collector, 151, 193
 not to submit applications for remission, 202
- Claimable, meaning of, 137
- Collateral purpose, admission for, unstamped documents can be admitted for, 161, 166, 167
 unstamped lease may be admitted for a, 316, 317
- Collector, defined, 27
 adjudication of proper stamp by, 146, 147
 after certificate by, the instrument becomes admissible, 197
 cannot revise the valuation of an instrument, 10, 139
 certificate by, in case of a promissory note stamped with postage stamps, 188
 certificate final, 192, 193
 certificate by, after disposal of suit, 192
 certificate by, 148, 187
 certificate by, effect of, on admissibility of an instrument, 156
 certificate by, an impressed stamps, 152
 decision by, 151
 effect of certificate by, 192, 201
 effect of decision by, 151, 193
 effect of endorsement by, 151
 for Calcutta, 27
 other districts, 27
 endorsement by, when cannot be made 148, 196
 includes Deputy Collectors etc., 27
 irregularity in endorsement by, 152
 nature of determination by, 147
 not a Court, 209
 not to try cases after giving sanction, 241
 power of, to stamp instruments impounded, 190
 recovery by, of duties and penalties, 201
 refund by, 152, 187
 return of instruments by, 192
 review by civil court of a decision by, 151
 sanction by, 237, 240, 241
 to make an enquiry, 209
 to make an enquiry before sanctioning prosecution, 229
 to give an opportunity to the accused to pay, 198, 230
 power of reference by, against decision by P. S. C. Judge, 225
 when to grant certificate, 192
 when not to try cases, 229
 where the, is to certify, 196
 where the, cannot certify, 196
- Commencement, of Stamp Act, 1, 2
- Company transfer by, 30
- Composition deed, stamp duty on, 294
 essentials of a, 294
 executed out of British India, 291
- Compromise, 263
 deed of, of a deed of mortgage 50, 323
 transfer by, of a suit, 31
- Consideration, payment without, 341, 347
 suit on original, when lies, 176 *et seq*
- Consolidate, 1, 2
- Conveyance,
 assessment of duties on a, 296
 assignment of a benefit of a contract, whether a, 29, 30
 assignment of debt whether a, 31, 297
 defined, 28
 direction as to duty in case of certain, 140, 141
 duties on, 295
 duties on, by whom payable, 141, 143, 144
 for a term of years, 28, 297
 in exchange of shares of another company, 297
 mortgages, when a, 32
 not a, 30, 31
 property must be sold on a, 29
 and not merely agreed to be sold, 30
 release when a, 30
 transfer inter vivos, 31, 32
 transfer by a trustee to a cestui que trust, 36
 transfer by a company, 30

- transfer by compromise of a suit,
31
what is, 28
who can execute, 278
- Co-operative Societies instruments by
or on behalf of exempt, 397
awards by registrar of 393, 397
- Copy Right Act exemption from
stamp duty—275, 278
- Copies, admissibility of, of an un-
stamped instrument, 165
of a lost instrument, 166, 186
of document certified to be true,
• duty on, 298
of entry in an account book, 299
of municipal records, 300
penalty and duty not leviable on,
196
presumption as to stamp on the
original, 300
- Corporations, allowance in case of
printed forms, 211
- Correspondence, 46
agreements by, stamp, 156
agreement to lease by, 46
- Cost, magistrate not to deal with, 200
penalty not to be included as, 200
no separate suit for, lies in suits to
recover penalties paid, 201
- Counterpart or a duplicate of an in-
strument, 300
of a lease, duty by whom payable,
143
of a lease and an agreement, 90
of a lease—exemption, 300, 301
- Court, petitions to, 79
agreements contained in petitions,
to 46, 164
duty of, 117
duty of civil, to receive and sub-
mit to Board of Revenue appli-
cations, 202
effect of certificate by, 197
procedure in appeal, in case of an
erroneous admission by lower, 185
power of, to correct instruments,
113
power of appeal, to admit instru-
ments, 183
procedure when an unstamped or
improperly stamped instrument
has been received in, 226
revision of decision by, as regards
sufficiency of stamps, 184, 197, 224
admission of instruments by trial,
181
statement of a case by, to High
Court or Chief Court, 223
the referring, must have doubt, 223
validity of a certificate by, 197
- Court Fees, saving as to, 245
- Covenant of renewal in instruments
86
to indemnify as to expenses, 86
• payment by instalment, 87
- Criminal Court, instruments filed in
156, 177.
- Criminal offence and procedure re-
lating to stamps, 227, 228.
- Criminal proceedings admissibility
of unstamped instruments, in,
156, 177
- Criminal prosecution arbitrator,
liability of, to 230
dishonest, intention to be pro-
ved, 231
facts to be proved in a, under S. 64,
236
for entries in a book, 230
for a letter, 230, 236
institution and conduct of, 240
parties, liability of, to 230
• private individuals, right to, 241
- Cultivator, meaning of, 301, 316
- Cultivation, for the purpose of,
meaning, 316
- Customs Bond, duty on, 301
duties by whom payable, 142
- D**
- Daktard, not a lease, 46
- Debentures, allowance for renewal of
certain, 214
issued under Act XI of 1879, 100
duties on, 302
explained, 302, 303
duties by whom payable, 142
- Debt, assignment of 31, 297
promise to pay barred, 23, 262
- Debtor, admission by, effect of, 176
- Declarations, 79,
duty on, 258
under Berar Electoral rules, 260
- Deed, of conditional sale, 298
of trust, 92, 368
schedule to a, 54
- Definitions, 10 et seq.
- Delivery order, duty on, 303
- Denoting duty, 116
- Determination of insufficiency of
stamp, 7, 155
- Direction as to duty, 140.
- Dishonest intention, when to be
proved, 231
- Distinct matters what are, 89, 90
what are not 86, 87, 88
test as to, 89
agreement to supply fish is not, 87
conveyance and release are, 89
conveyance and lease, 89

- counterpart of a lease and a mortgage, 90
 covenant to renew is not, 86
 covenant to indemnify is not, 86
 instruments relating to, 84
 lease and mortgage is not, 87
 one instrument by several persons, 90
 lease, 90
 principal and surety are not, 87, 88
 principal and agent, 90
 penal cause in an agreement whether, 87
 relinquishment of interest and agreement, 91
 provision as to payment of rent, 89
 sale with an arbitration clause is not, 88
 in a transfer by a company, 89
 sale and mortgage, 88
 separate contracts with separate persons, 91
 several properties, conveyance of, 91
 trust deed and exercise of power of appointment, 92
 Divide, 38
 agree to, 38, 39
 Divorce instruments relating to duty on, 304
 amongst Hindoos, 305
 Doubt as to amount of stamp, 8
 as to construction, 5
 Documents, admission of, for a collateral purpose, 161, 166, 167.
 admissibility of unstamped, 155, 156, 163
 executed outside British India, 117, 118, 120
 post-script to, 267
 reference of one in another, 84
 Doult Darkhast, 47
 Doult Firist, 79
 Dower, deed of, duty on, 360
 Drawer and Drawee,
 of a bill of exchange, 13
 Duly stamped, 32, 159
 explained, 32
 affixed or used in accordance with law, 33
 admissibility of instruments not, in evidence, 159, 160
 effect of not duly stamping an instrument, 164
 document stamped subsequent to execution, whether, 34
 hundies, 33
 not, by accident or mistake, 194
 omission by stamp vendor to endorse effect of, 33
 question as to sufficiency, 34
 rules by Government as to documents being, 33, 372, 374
 separate sheets, 34
 non-attestation of each sheet, 34
 writing on the reverse side of a stamp, whether prevents being, 33
 Duplicate, duty on a, 300
 partition deed in, 301
 Duties by whom payable, 141, 142, 143
 denoting, 116
 direction as to, in case of certain instruments, 140, 141
 effect of rules, 103
 facts affecting, to be set forth, 138
 how to be paid, 102
 reduction and remission and compounding of, 101, 381
 rules for payment of, 102, 103, 104, 371 *et seq.*
 saying of contracts as to duties payable, 141, 143
 valuation for, 10, 125 *et seq.*
- E
- Equitable mortgage, 274
 Endorsement, by Collector, 195
 as a receipt, 317
 effect of, 151
 irregularity in, 152
 irregularity in, remedy, 217
 omission to endorse by the stamp vendor, 33
 of instruments on which duty has been paid under ss. 35, 40 or 41, 195
 of transfer, 114
 transfer by of a bill of exchange etc., 365
 transfer by, of a bill of lading, 365
 transfer by, of a policy of insurance, 115, 365.
 transfer by, of securities, 365.
 unstamped, 161
 Enquiry, by Collector, 209, 229
 Entry of Advocate, Vakil or Attorney on the rolls of a High Court or Chief Court, 305, 306
 exemption from duty, when, 306
 Entry in account books, 249, 250
 offence in, 230
 Evasion, stamp duty, 9, 10, 199, 235
 acting on the advice of a registration officer, if, 199
 apparent, 230
 effect of, 10
 effect of, to stamp and thereby defrauding Government, 235
 must be intentional, 199

Examination and impounding of instruments, 152, 153
 Exchange, delivery in, 272, 307
 agreement to deliver goods in, 264
 of property, instruments of duties on, 306
 of shares of one company for those of another, 297
 instrument of, duty on by whom payable, 143
 sale and, distinction, 307
 Executed, defined, 35
 Execution, defined, 35
 of burmese document, 35
 instrument, by several persons, 35
 of an instrument in contravention of a rule by Govt., 33
 stamp affixed subsequent to, 117
 time of and of an instrument, 82, 116
 Executing, meaning of, 229
 Extent, of stamp Act, 1
 Extension of time,
 of the 1st mortgage in case of a fresh advance, 267
 in consideration of an enhanced interests, 267

F

Face of the instrument, 109
 Facts affecting duty to be set forth in the instrument, 138
 Final order, in partition suit, 40
 by Civil Court, 41
 by revenue authority, 41
 For any purpose, meaning of, 159
 Foreign currencies, conversion of, 125
 Foreign instruments, duty on, 72, 78
 when stamp to be affixed on, 118, 120
 first holder in British India to affix stamp on, 119, 120
 Further charge, duties on, 307
 duties of, by whom payable, 142
 agreement to make further advance, 308
 mortgage and, 308

G

Gift, instruments of, 308
 conditional, 339
 Goods warrant for, 368
 agreement for sale of, 368
 agreement for sale of,
 with subsidiary stipulation, 268
 Goods and merchandise, 270
 agreement for sale of, 271
 Government instruments by or on behalf of, 75, 80

local, power of, to make rules subject to the control of G. C. in council, 243
 local, delegation of powers by, 245.
 Governor-General in Council, power to reduce and remit duties, 101
 power of carrying out the Act, 244
 Grain, agreement to deliver, 17, 21
 22, 264, 265
 agreement to deliver, when attested by two witnesses, 286, 287.
 Granted,
 use of the word, in a lease, 45

H

Hand note, 267
 Hatchitta account in a, 253
 as an acknowledgement, 250
 stipulation to pay interest in a, 256
 High Court, power of, 202
 case to the, meaning of, 219
 statement of case to, by Chief Controlling Revenue Authority, 218.
 facts to be stated on reference of a case to, 220
 general question to, 221
 opinion to be stated in the reference to the, 220
 power of, to call for further particulars in a case stated, 221
 procedure in disposing of the case stated, 222
 reference to, as to kind of stamp, 221
 statement of a case by other courts to, 223
 what cases can be referred to, 219, 220
 when the instrument is not in existence, reference to, 220, 221
 Hire and purchase, agreement, 263
 by entry in a register, 263
 Hissanama, 333
 Hudassa, duty on a, 360
 Holder,
 intermediate, not to stamp bill etc., 204
 liability of a, to criminal prosecution, 229
 Hundi, 14
 does not necessarily include a bill of exchange, 14
 how to be written, 109
 renewed, admissibility of, 175
 stamp on a, 283
 jakmi, 15
 shahjogii, 14
 unstamped, admissibility of, 170
 when a suit may be on original consideration in case of, 170

when cannot be stamped with
an adhesive stamp, 110
Hypothecation and lease, 46

I

I. O. U. Notes, 65
Ijara, a lease, 314, 315
Illiterate person, execution by, 36
Impounded instruments, how to be
dealt with, 188
must be done a in performance
of functions of the public
officer, 154
revision by High Court of order
as to, 155
who can, 152, 153
who can deal with, 152, 153
Impressed stamp, 36
Includes, meaning of, 11, 48
Indemnity Bond, Instrument of,
duty on, 309
against losses, 310
as to costs, 310
contract contained in a petition to
Court, 309
duties by whom payable, 112
insurance by way of, 335
what is, 309
what is not, 340
Indemnity note to a railway co., 268,
310
Instalments
covenants to pay by, 87
Instrument, definition, 36
addition of new terms to an, 113
admission of improperly stamped,
163, 166
admission of ownership, 79
agreement to refer to, alteration,
77, 78
assignment of a policy of in-
surance, 78.
assignment of a chose in action,
78
assignment of back rent, 79
when cannot be questioned, 178,
180
alteration of, 8, 9, 77
alteration by a second, 9
by or on behalf of Govt., 72, 75, 80
chargeable with duty, 72, 76
chargeable with duty of one anna,
provision regarding, 155, 160
coming within several descrip-
tions, 92
compromise in court, 79
conditional, 19
connected with mortgages of
marketable securities, 128
counterpart or duplicate of an, 300

declarations, 79
distinct consideration for each, 85
dowl first, 79
distinct matters in, 86
effect of not duly stamping an, 164
endorsed, transferred etc., 78
entries is an account book, 79
examination and impounding of,
152
exceptions of liability to duty of
an, 80
execution of, for use out of British
India, 77
executed out of British India,
but affecting property in British
India, 24, 78, 116
face of an, 109
for sale etc., of a ship, 75, 80
higher of two duties to be paid on,
coming within several descrip-
tion in the schedule, 95
impounding of, 152
letter, whether an, 37
liability of, to duty, 76
liability of a foreign, to duty, 78
lost, 165
must have been produced before
Court, 154
of partition, 37
not duly stamped, inadmissible in
evidence, 155, *et seq.*
of partnership, duty on, 333
one, only to be written on the
same stamp, 110
nature of, 77
not duly stamped, 152
not duly stamped inadmissible in
evidence, 155, 156
not liable to stamp duty, 72, 75, 79
non-liability for loss of, sent under
s. 38, 202
not bearing proper stamp cannot
be admitted, 155, *et seqs.*
one, to be on the same stamp,
110
partial execution of, in British
India, 77
penal clauses is, 7, 94
penalty for executing an, not duly
stamped, 227
petition to court, 79
plain paper in, use of 103, 104
power of attorney, 79
power of Court to correct, 113
relating to distinct matters, 84
reserving interest, 126
several, 80
several, used in a single transac-
tion, 80, 81
on several sheets, 34, 109

- stamped with an impressed stamp,
 how to be written, 108, 109
 subsequent stamping of an, 34
 to be stamped at the time of
 execution, 116
 tenants, notice to, whether an,
 80
 test of liability of an, to stamp
 duty, 76
 time of stamping of, 116
 title of an, 7, 8
 to be written on the face of the
 109
 unduly stamped by accident, 194
 valuation of, 10
 when not chargeable with duty,
 75
 who can impound, 153
 writting of an, with impressed
 stamp, 108
 written contrary to s. 13, or s.
 14
 to be deemed unstamped, 114
 Insufficiency of stamp, determina-
 tion of 155
 Insurance, assignment of a policy
 of, 78
 certificate by an, company, not a
 receipt, 68
 policies of sea, defined, 54
 policies of sea insurance to be
 expressed in a Sea policy, 99
 re-transfer of a policy of, 78
 transfer of a policy of, 7
 Interest, agreement to pay debt with,
 256, 265
 compound, 127
 instruments reserving, 126, 127
 stipulation to pay, 256
 to be excluded in calculating stamp
 duty, 127
 Interpretation of statute,
 change in the mode of, 5
 mode of, 5
 crown must bring the case within
 the letter of law 5
 construction should be strict, 5
 in the case of an exemption, 5
 construction, in case of doubt, 5
 construction, where co-ordinate
 sections are inconsistent, 5
 history of statute 6
 of headings, 6
 of marginal notes, 6
 of proceedings in council 6
 of repeal of a section, 6, 7
 title, 6
 principles of, 4, 5
 proviso, 6
 punctuation, 6
- J**
- Jokhmi Hundi, 15, 337
 as a policy of insurance, 337
 Jurisdiction of Magistrates, 242
- K**
- Kabuliat, is a lease, 45
- L**
- Land Improvement Loans Act,
 1883, 354
 Landlord and tenant—relationship
 of, 46
 Lease, definition of, 43
 agreement in a, 315
 agreements to, 45, 46
 agreement to take land on, 46
 agreement to, in a petition of com-
 promise, 46
 agreement to, in a correspondence,
 46
 amaldastak, 47
 and conveyance, 80
 and license, distinction, 44
 and mortgage, 47, 87
 covenant to pay by instalments in
 a, 87
 counterpart of a, 45, 90
 daily rent in a, 315
 doul darkhast not a, 47
 and hypothecation, 46
 entry in a book is not a, 48
 exemption of, from duty, 316
 for an indefinite term, 315
 grant of an application for a, 15
 kabuliyat is a, 45
 landlord and tenant, 46
 not a, 47, 48
 mining, duty on a 135, 136, 138
 monopoly to manufacture spirit is
 not a, 47
 muchulka, not a, 47
 not a, but a sale, 47
 no, unless rent is reserved, 47, 290
 present demise in a, 315
 prospecting lease, 87
 rent must be payable in a, 47
 renewal of, 315
 stamp duty on a, 310, 311, 312
 surrender of, 334
 test as to a, 44
 tolls of any kind, 45
 transfer of, 337
 undertaking in writing to occupy,
 is, 45
 unstamped, admission for a colla-
 teral purpose, 316, 317
 valuation of, for the purpose of
 stamp, 314

- what is, 44
 - zur-i-peshgi, 47
 - License or lease distinction, 41
 - Local Authorities Loans Act, 1879
 - bonds, debentures issued under, 98
 - Local Government delegation of powers by, to Revenue Authority, 245
 - power of, to make rules for sale of stamps, 243
 - Letter of allotment of shares, duties on, 317
 - of cover, explained, 337
 - of credit, duty on a, 317
 - explained, 318
 - of license, duty on, 318
 - Letters, agreement in, 266
 - as instruments, 37
 - acknowledgment in a, not stamped, 236, 255
 - authorizing a person to realise debt from a third person, 297
 - of assignment, 131, 165
 - offence in not stamping a, 239, 236
 - promise to pay in, 255
 - requesting loan, 65
 - appointing an arbitrator in place of another, 370
 - requesting appointment of arbitrators, 269
 - when not an acknowledgment, 251
 - written by parties to arbitrators, 269, 270
 - Patent Appeals, 183
 - Liability of instruments to duty, 72
 - test of, 10
 - Loans, when distinct matters, 90
 - by one instrument by several persons, 90
 - Local authority, 101
 - loans under, Loans Act, 98, 100, 101
 - Lost instrument,
 - admissibility of, 166
 - copies of, 166
 - onus of proof of 166
- M**
- Magistrate, jurisdiction of, 242
 - matters to be stated in the judgment by, 242
 - when not to try, 229, 241
 - Manufacture of spirits, monopoly of, not a lease, 47
 - Marine policy, 55
 - Marupat is a counterpart of a lease, 45
 - Marketable security defined, 48
 - instruments connected with, 128
 - mortgage of, to be charged as agreements, 128
 - Mashahatapatra, 267, 361
 - Mate's receipt, 17
 - Material alteration of an instrument, 8, 9, 110, 111, 112
 - not, 114
 - May, explained, 105
 - Means, explained, 13
 - Memorandum of Association of a Company, duty on, 319
 - Merchant shipping Act
 - insurance referred to in s. 506, 98
 - sale, transfer etc. of a ship registered under the, 75
 - Mining lease duty on a, 135, 136, 138
 - Money, advanced or to be advanced, 49
 - meaning of, 29, 49
 - Mortgage, deed, defined, 48
 - and pledge distinction, 321
 - bill of exchange accompanying a letter of hypothecation whether a, 325
 - by trustees, 51
 - to be stamped as agreements, when, 128
 - release or discharge of a mortgage relating to discharge of marketable security, 128
 - improvements on, property, 323
 - by compromise 323
 - conditional 324
 - duties on 320, 321
 - fresh advance 51
 - enhanced rate of interest in a, 51
 - equitable 271
 - executed jointly by mortgagor and surety 322
 - extension of time of 1st., 257
 - extension of time in consideration of enhanced interest on, 267
 - money in the hands of govt. 52
 - muchalka, 53
 - must be by way of a loan, 50
 - must create a right, 51
 - must be of specific property 51
 - not 52
 - of a crop 325
 - of moveables, 272, 323
 - usufructuary, 50
 - or lease, 47
 - security, 50
 - security bond, when to be stamped as a, deed 321
 - no, unless the property is specified, 52
 - Sale or, 33
 - Mortgage deed, defined, 41

duty on, 320
 deed of compromise as a, 50, 323
 duties by whom payable, 142
 endorsement on a 325
 must be by a mortgagor in favour
 of a mortgagee, 52
 valuation in a, 324
 Mortgage of a crop, 325
 Mortgaged property transfer of, to
 the mortgagee, 133
 when the stamp, on the new in-
 strument, can be deducted, 133,
 134
 Muchalka, is not a lease, 53
 Municipal, copies of, records, 300
 grant of a receipt by a, body, 346
 Mushaharapara 267 ; 351

N

Negotiable Instruments,
 admissibility of unstamped, 170
 Nokarnama, 269
 Notarial Act, 326
 Note or Memorandum, sent by a
 broker, 327
 Note of Protest by Master of a ship,
 328, 329
 Notice to tenants, 80

O

Objection as to proper stamp duty,
 161, 162, 179, 186
 at any stage of suit, 179
 decision of, 162
 executant of a counterpart of a
 lease, estopped from, 317
 in appeal, 162, 180
 in a Letters Patent appeal, 183
 in the same suit, 182
 when can be raised, 161, 186
 in revision, 184
 withdrawal of, 162
 Obligation,
 bond must create an, to pay, 19
 must be express, 20
 to grant receipt in certain cases,
 115
 Offence, 231
 not an, 232
 abetment of, 231, 240
 against stamp law, 227 *et seq.*
 apparent evasion, whether an,
 239
 evasion of the stamp law an, 235
 entries at the request of the vendor,
 240
 instrument must be chargeable
 with duty, to create an, 232
 no, by signing by a draftsman or
 witness, 229

opportunity to be given to put
 in stamps before prosecution,
 198, 230
 prosecution for, against stamp law,
 197
 purchasing under a false name,
 240
 sanction by collector necessary
 before prosecution for an 237,
 240, 241
 sale of stamps when, an, 240
 Omission, to endorse, by stamp-
 vendor, 33
 to stamp a document, 234, 235
 to state values, effect of, 139, 140
 Omit of proof
 " in the case of a lost instrument,
 166
 Oral evidence, of contents of an un-
 stamped instrument, 165
 Order, final, in a partitioning suit, 40,
 41
 explained, 14
 Paddy, mortgage by advance of, 19
 Paper, definition of, 53
 plain, use of, 103, 104, 373
 Partnership, instrument of, duty on,
 333
 division of partnership 39
 dissolution of, 333
 Partition, acknowledgment as an in-
 strument of, 39
 by a Civil Court, 41
 by an arbitrator, 41, 42, 144
 by revenue authority, 41
 calculation of duty on a deed of,
 331, 332
 divide meaning of, 38
 agree to divide meaning of, 38
 division must be between co-
 owners, 42
 duty on an instrument of, 329,
 330
 duty by whom payable, 143, 144
 deed of, 39
 document containing notes of, how
 far a deed of, 43
 not a deed of, 43
 final order in a suit for, 40, 41
 hissanama, 333
 kind of stamp to be used, 332
 instruments of, defined, 37
 lists of property as instruments of,
 40
 partnership, division of an instru-
 ment of, 39
 release, as an instrument of, 32
 valuation, 332

- Patta is a lease, 43
 Pauper, cannot claim exemption from liability to duty, and penalty, 167
 civil court not to forward applications for remission of duty by a plaintiff, 202
 Pawn, agreement relating to, 272
 explained, 271
 instrument relating to exempted if untested, 273
 Payable on demand, explained, 16, 341
 Payer
 power of, to stamp bills of exchange etc. received by him in stamp, 203
 Penal clause, 2, 91, 95
 Penalty, 117, 156
 acknowledgment, in an, 256
 admission of instruments on payment of, 156, 167, 168
 calculation of, 169
 cannot be levied on account of increased stamp duty, 168, 169
 cannot be levied on a bill of exchange promissory note or an instrument chargeable with duty of one anna or half an anna, 156
 collector's power to refund, 159
 court not to refuse to accept, 168
 court cannot demand, after disposal of a case, 167
 for executing documents not duly stamped, 227
 for failure to cancel adhesive stamp, 233
 for breach of rules for sale of stamp, 239, 240
 for omission to comply with s. 27, 233
 for not drawing full number of bills as policies of marine insurance, purporting to be in sets, 237, 238
 for not making out policy or making one not duly stamped, 237
 for post-dating bills and other devices to defraud Government revenue, 238
 for refusal to grant a receipt, 235
 in case of a pauper, 167
 nature of, 167
 no, unless the instrument is chargeable, 117
 payment of, does not protect against prosecution, 198, 199
 person paying duty and, may resort to realize duty and, 200
 cover, 199, 200
 * suit to realize duty and, 200
 when wrong stamp is used, 169
 Person, explained, 11, 228
 paying duty and penalty may resort to, 199
 Place of trial, 212
 Plain paper, use of, with stamps, 103, 104, 273
 Pledge, agreement relating to, 272
 Policy of Insurance—definition, 53
 stamp duty on, 331, 335
 duty by whom payable, 142
 by way of indemnity, 335
 joining bond in an instrument of, 15, 337
 granted by Director-General of Post office, 336
 accident or sickness, insurance, duty on, 335
 for a time, 331
 fire, insurance, duty on, 335
 life, insurance duty on, 336
 re insurance, 336
 railway accident, 335
 renewal of, original, 335
 remission of duty, 338
 Policy of Sea Insurance, 51, 98, 99
 transfer of, by endorsement, 115
 how to be written, 98
 stamp duties on, 334
 must be expressed in a Sea policy, 98
 must not be for a period exceeding 12 months, 98
 particular risk to be mentioned, amount to be mentioned, 99
 names of writers to be mentioned, 99
 penalty for not drawing full number of policies of marine insurance, purporting to be in sets, 237
 Post office
 money sent through, 146, 236
 Postage stamps
 promissory note stamped with, validated by Collector, 188
 use of, 374
 Postal Money order, whether requires stamp, 116, 236
 Powers, delegation of certain, 245
 to reduce and remit duties, by a, 101, 102
 of payer to stamp bills, promissory notes etc., received by him unstamped, 203
 Power of appointment, 273
 Power of Attorney, defined, 56
 copy of, 340

- execution of single, by several persons, 90, 340
 duty on a, when authorizing several persons, 338, 339
 executed out of British India, 79, 340
 executed by a firm, 339, 340
 letter, when a, 57
 not a, 57
 for a single transaction, 339
 when required for suits under the Presidency S. C. C. Act, 338
 what is a, 56, 339, 340
 Practice, stamp according to, 34
 Premium, 55
 in a lease, 314
 Price, meaning of, 29
 average, 126
 Principal and agent,
 entry in an account book whether distinct matters, 90, 91
 Principal and surety,
 contract by, 87, 88
 Procedure in case where an unstamped or improperly stamped instrument has been received in Court, 210
 Produce, agreement to deliver, 17, 21
 Promise, in a promissory note must be express, 61
 implied, 62
 in a letter, 255
 must be unconditional, 62
 to pay, 61, 170
 Promissory note, definition of a, 57
 " explained, 58
 acts relating to duty on, 369, 370
 amount of money must be certain, 61
 admissibility of unstamped, 156, 170
 agreement to pay at a certain place, 63
 amount payable should be money only, 61
 collateral agreements, 63
 contemporaneous receipt as a, 173
 does not lose its character as a,
 by deposit of title deeds, 58
 collateral agreement in a, 341
 duties on a, 341
 duties by whom payable, 143
 effect of not cancelling a stamp on a, 342
 promise to pay must be unconditional, 62, 63, 64
 when terms vague, 58, 59
 I. O. T. notes, 65
 implied promise to pay, 62
 in favour of a community, 59
 isolated slips of paper, 59
 interest, in a, 342
 joint promisors in a, 59
 person must be certain, 59
 must contain an order to pay to or order of a certain person, 60
 promise to pay, should be of the whole amount, 61
 promise must be express, 61
 promise to pay interest, 64
 not a promissory note, but a bond, 64
 not a, but an agreement, 64
 on two pieces of stamp paper sewn together, 104
 stamp duty on, 341
 " by whom payable, 142, 143
 payable on demand, 16
 payable to bearer on demand, void, 60
 request for a loan, 63
 " by letter, 65
 is a bond when attested, 20, 21
 stamped with a stamp of higher value than necessary, 105
 test of a, 58
 what is a, 57, 58, 341
 when a suit in respect to a unstamped, may be on the original consideration, 170, 171, 172, 173
 when the plaintiff cannot be allowed to recover, 174
 Price
 meaning of, 29
 Property
 explained, 28
 Prosecutions—institution and conduct of, 240
 for offence against stamp law, 197
 no, unless the collector thinks that it was done with intention, 199
 payment of penalty does not protect from, 198
 procedure in, 241
 sanction by collector necessary before, can be started, 237, 241
 Protest Bill or note, 342
 by a Master of a ship, 343
 Proxy, 343
 Public charity, 278
 Publication of rules, 244
 Punchnama, 275

Q

 Question, as to sufficiency of stamp, 34
 general, to the High Court, 221

 Rate of Exchange,
 statement as to, effect of, 126

- table of, 308
- Receipt, definition, 66
- Acknowledgment in a debtor's book, 68
 - acknowledgment necessary between debtor and creditor, 67, 68
 - acknowledgment must be in satisfaction of a debt, 68
 - acknowledgment in a letter whether a, 68, 316
 - by a municipal body, 68, 346
 - by a banker, 345, 348
 - certificate issued by an Insurance Company, not a, 68, 69
 - conditional payments, 347
 - endorsement as a, 347
 - entries in a book, 68
 - exemptions, 344, 345
 - for rent, 348
 - no particular form of expression necessary, 66, 67
 - not a, 67, 68
 - not exempt from duty, 348
 - obligation to grant a, 145
 - payment among co-servants, 69
 - payment without consideration, 347
 - penalty for refusal to grant a, 235, 236
 - postal money order, 146, 236
 - remission of duty on a, 348, 349
 - for salaries of government servants to be stamped, 346
 - sanction by collector is necessary before a prosecution under s. 65 can be made, 237
 - stamp duty on, 344
 - subsequent stamping of, 69
 - unstamped, special provision as to, 155
 - unstamped, admissible on payment of penalty, 156
 - when the owner receives back his money, 348
 - words to be used in a, 66, 67, 346, 347
- Reconveyance, of mortgaged property, 349.
- Recovery, of duties and penalties, 204
 - of penalty and duty paid by a wrong person, 199, 200
 - order by Collector, to a wrong person, 204
- Reduction and remission of duties, power of G. G. in Council, 101
- Reference and revision, 215 *et seq.*
- Reference,
 - as to kind of stamp to be used, 221
 - of one document in another, 84
 - by Collector, 215
- facts to be stated on, 220
- general questions to High Court, on 221
- to arbitration, 270
- to High Court, 218
- to High Court, when the instrument, is not in existence, 220
- opinion to be stated in, 220
- what cases can be referred, 220
- Refund, 9
 - by revenue authority, 202
 - to parties not named on the stamp paper, 210
 - of penalty by collector, 189
 - when stamp is misused by officer of court, 207
 - who can apply for, 209
- Re-insurance duty on, 336
- Release, by a mortgagee to mortgagor, 352
 - agreement to abide by the decision of punch is, 351
 - by a mortgagee to mortgagor, 352
 - by a Hindu widow, 352
 - by a reversioner, 352
 - by a benamdar, 351
 - effect of writing a deed of, on a stamp paper on which a conveyance was written, 114
 - nature of, 350
 - on receiving compensation, 351
 - or conveyance, 351, 352
 - or discharge in case of certain instruments connected with mortgages of marketable security, 128
 - not release, 352, 353
 - partition deed wrongly described as a deed of, 39, 351
 - penalty on a deed of, 353
 - duty on, by whom payable, 142
 - renouncing claim, to avoid litigation, 350, 351
 - among members of the family, 352
 - by an auction purchaser, 351
 - stamp duty on an instrument of, 350
 - where the deed is not consideration, 351
- Rent,
 - daily, in a lease, 315
 - must be reserved, to be a lease, 47
 - receipt for, after decree, 348
- Respondentia bond,
 - stamp duty on, 353
 - by whom payable, 142
- Return
 - of documents, 189, 191, 192

- Thumb marks on an instrument, 36
 Time of execution of an instrument, 82
 " of executions of an instrument executed out of British India, 117
 " duty of court, to enquire about the time of, 117
 Time of stamping instruments, 116, 117
 of stamping documents executed in British India, 116, 117
 of instruments other than bills, or cheques and notes executed out of British India, 119, 120
 Title deeds
 deposit of, agreement by, 272
 Tolls, letting out on, 45
 Transactions
 documents forming one, 83, 84
 one, 83
 reference of one document in another, 84
 several instruments for, 80, 81
 when the later deed modifies the 1st deed, 84
 schedule to a deed, not separate, 84
 Translation, of Act, to be sold cheaply, 246
 Transfer, by trustees, 364
 by company, 30
 by compromise in a suit, 31
 by endorsement by a party, 365
 calculation of duty in such cases, 133, 134
 in consideration of debt or subject to future payment etc., 129
 inter vivos, 31
 of a lease, duty on, 366
 of a mortgage, 365
 of mortgaged property to mortgagee, 32, 133
 of paternal rights, 268
 of any interest, 364
 of debentures, 364
 of property subject to a mortgage, 129, 131, 132, 133
 of property under Administrator General's Act, 364
 of trust property, 364
 of a share in a lease, 367
 of shares, 364
 stamp duties on deeds of, 364
 stamp duties by whom payable, 142
 valuation, 366
 Trial, place of for offences under Stamp Act, 242
 Trustee, transfer by, 30, 364
 Trusts stamp duty on an instrument of future profits, 268
 declaration of, duty on, 367
 stamp duty on an instrument of revocation of, 367
 Trust property, transfer of, 364
- U**
- Ultra vires rules, 244
 Underwriter, 55, 100
 Usufructuary mortgage, 50.
- V**
- Valuation -- of instruments, 10, 125 *et seq.*
 annuity etc., 134, 135
 assignment of a mortgage, 131, 376
 cannot be increased by Collector, 10, 139
 conversion of amount expressed in foreign currencies, 125
 effect of omission to, 139, 140
 of stocks and marketable securities, 125, 126
 or appraisement, 276
 of a mortgage deed, 137, 324
 of a subject matter, 137
 for duty, 125 *et seq.*
 when such matter is indeterminate, 135
 which cannot be ascertained at the date of execution, 138
- W**
- Warehousing and Insurance clauses as to, 268
 Warrant for goods, 368
 Writer of an instrument liability to prosecution, 229
 Workman's Compensations Act, reduction of duty, 399
 Writing on the reverse side of an instrument bearing an impressed stamp, 33
 an instrument contrary to s. 13 or s. 14, effect of, 114
 offence in, 229



